



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

SECOND SECTION

CASE OF DEMİRBAŞ AND OTHERS v. TURKEY

(Applications nos. 50973/06, 8672/07 and 8722/07)

JUDGMENT

This version was rectified on 12 February 2009
under Rule 81 of the Rules of the Court

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Demirbaş and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in three applications (nos. 50973/06, 8672/07 and 8722/07) 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 three Turkish nationals, Mr Cem Demirbaş, Mr Haydar Ceylan and Ms Binnaz Demirbaş (“the applicants”), on 8 December 2006, 15 February 2007 and 17 February 2007 respectively.

2. The applicants were represented by Mr Z. Polat, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 30 August 2007 the Court joined the applications and declared them partly inadmissible. It decided to communicate the complaints made by the applicant in the second application concerning the ill-treatment to which he had allegedly been subjected, as well as the complaints concerning the rights of all three applicants to release pending trial, to take proceedings to challenge the lawfulness of their detention, to an enforceable right to compensation, to a fair hearing within a reasonable time and to an effective remedy in respect of the reasonable-time complaint, to the Government. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

4. The applicants were born in 1977, 1974 and 1974, respectively, and live in Istanbul.

A. The applicants' arrest, detention and trial

5. Cem Demirbaş and Haydar Ceylan were arrested on 18 April 1999, and Binnaz Demirbaş was arrested on 19 April 1999. According to the arrest report drawn up in respect of Binnaz Demirbaş and Cem Demirbaş, the reason for their arrest was the suspicion that they were members of an illegal organisation, namely the *Türkiye Komünist Partisi/Marksist Leninist - Türkiye İşçi Köylü Kurtuluş Ordusu* (the TKP/ML-TİKKO; the *Communist Party of Turkey/Marxist Leninist-Workers' and Peasants' Liberation Army of Turkey*). They were subsequently placed in custody at the Anti-Terrorist Branch of the Istanbul Police Headquarters.

6. On 25 April 1999 the applicants were brought before the prosecutor and, subsequently, the duty judge of the Istanbul State Security Court, who questioned them further and recorded their statements. The duty judge remanded them in custody pending the introduction of criminal proceedings against them.

7. On 3 June 1999 the public prosecutor at the Istanbul State Security Court filed an indictment against the applicants and nine other persons. The applicants were charged with attempting to undermine the constitutional order, an offence proscribed by Article 146 § 1 of the former Criminal Code.

8. On 25 August 1999 the Istanbul State Security Court held the first hearing on the merits of the case. In the course of twelve subsequent hearings, the actions taken by the trial court were limited to the reading out of the indictment in open court, asking the applicants to submit their defence and obtaining copies of the applicants' birth certificates and criminal records. The applicants' request to widen the scope of the investigation by, *inter alia*, hearing a number of witnesses, was rejected by the trial court.

9. On 22 May 2002 the first-instance court found the applicants guilty as charged and sentenced them to death. This sentence was commuted to life imprisonment.

10. The applicants appealed.

11. On 17 April 2003 the Court of Cassation quashed the judgment.

12. On 2 June 2003 the case against the applicants resumed before the Istanbul State Security Court.

13. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. The case against the applicants was transferred to the Istanbul Assize Court.

14. Up until 14 February 2007 the applicants and their representatives requested the formers' release pending trial several times both before the Istanbul State Security Court and the Istanbul Assize Court. On each of those occasions the trial court rejected the applicants' requests, considering that the reasons justifying their remand in custody still obtained on account of the "nature of the offence of which they were accused, the evidence in the file, and the continuing risk of escape". Binnaz Demirbaş's objection of 15 April 2002 and the other two applicants' objections of 25 July 2005 against the orders for their continued detention were also dismissed on 17 April 2002 and 5 September 2005 respectively.

15. On 14 February 2007 the Istanbul Assize Court ordered the applicants' release pending trial.

16. According to the information in the case file, thirteen more hearings have been held since 2 June 2003 in the context of the criminal proceedings brought against the applicants which, according to the information available in the case file, are still pending.

B. The alleged ill-treatment of Haydar Ceylan in police custody

17. On 18 April 1999, following his arrest at 1 p.m., Haydar Ceylan was first taken to the Gaziosmanpaşa district police headquarters in Istanbul.

18. According to the arrest report drafted by two police officers, Haydar Ceylan was apprehended since the officers found him "suspicious". The report noted that the applicant refused to sign it. On the same day at 1.45 p.m. another report was drawn up by three officers concerning the body search, which recorded that the objects found on the applicant's person were given to him. This report also noted that the applicant refused to sign it. According to an undated third report, without the applicant's signature or a note concerning his refusal to put his signature, drawn up and signed by three officers, the applicant resisted the body search and attempted to jump out of a window while he was detained in the Gaziosmanpaşa police headquarters; the officers prevented him from doing so by using force.

19. On the same date the applicant was transferred to the Anti-Terrorist Branch of the Istanbul Police Headquarters.

20. On 19 April 1999 at 3.42 a.m. the applicant was examined by a doctor who found that there were a few ecchymotic lesions (bruising) on the applicant's back, an ecchymosis on his left eyelid, and a few ecchymoses on his left shoulder.

21. On 22 April 1999 at 5.45 p.m. the applicant was once again examined by a doctor who observed two old scabbed grazes on his right

eyebrow and on the left of his nose, and another scabbed superficial graze on his left shoulder.

22. On 25 April 1999 at 10.30 a.m., before his referral to the public prosecutor and the duty judge, the applicant was examined at the Beyoğlu branch of the Forensic Medicine Institute. The doctor, who examined the applicant and nine other persons, noted that there were scars of 0.2-0.3 cm in diameter on the applicant's right eyebrow and on the left of his nose. He also observed a scabbed graze of 1x1 cm on his left shoulder.

23. On the same day Haydar Ceylan stated before the duty judge at the State Security Court that he had been subjected to torture while he was in police custody. In particular, he had been suspended by the arms, forcibly given water and beaten.

24. On 3 March 2000 and 22 May 2002 Haydar Ceylan made submissions to the Istanbul State Security Court and stated, *inter alia*, that he had been subjected to torture while in police custody. In his submissions of 3 March 2000 the applicant gave a detailed description of the ill-treatment to which he had allegedly been subjected.

25. On 6 June 2002 the applicant's representative lodged a formal complaint with the Fatih public prosecutor's officer against the police officers who had allegedly inflicted ill-treatment on the applicant. In support of these claims, he submitted the medical reports drafted in respect of the applicant.

26. Upon the receipt of the petition of the applicant's representative, the Fatih public prosecutor initiated an investigation into the allegations of ill-treatment.

27. On 26 August 2002 the Fatih public prosecutor obtained statements from Haydar Ceylan, who maintained that he had been subjected to ill-treatment in both the Gaziosmanpaşa and Istanbul police headquarters.

28. On 28 November 2002 the public prosecutor took statements from H.İ., one of the police officers who had arrested the applicant. H.İ. stated that the injuries noted on the medical reports had occurred when the officers had attempted to prevent the applicant from jumping out of the window in the police headquarters. H.İ. denied the allegations of torture.

29. On 17 February 2003 the public prosecutor took statements from the second arresting police officer, M.Ö., who also contended that the applicant had attempted to jump out of the window and that they had been obliged to use force.

30. On 25 August 2003 the Fatih public prosecutor filed a bill of indictment with the Fatih Criminal Court against H.İ. and M.Ö., charging them with inflicting ill-treatment on Haydar Ceylan under Article 245 of the former Criminal Code.

31. On 1 September 2003 the first hearing before the Fatih Criminal Court was taken up with procedural matters. The first hearing on the merits of the case was scheduled for 18 December 2003.

32. On 7 November 2003 Haydar Ceylan reiterated his allegations of ill-treatment before the Kandıra Criminal Court. (He was then being detained in a prison in Kandıra.) The record of the hearing containing his statements was sent to the Fatih Criminal Court.

33. On 18 December 2003 the Fatih Criminal Court heard H.İ., who once again denied the applicant's allegations of ill-treatment. On the same day the Fatih Assize Court accepted the applicant's request to intervene in the proceedings as a civil party.

34. At the end of the second hearing on the merits, held on 6 July 2004, the criminal court decided that a forensic expert should give an opinion as to whether the applicant had been ill-treated as alleged.

35. On an unspecified date a forensic expert recommended that the first-instance court should obtain a medical opinion from the competent section of the Forensic Medicine Institute regarding the alleged physical trauma as well as the psychological trauma which the applicant could have suffered.

36. On 2 November 2004 the Fatih Criminal Court requested the Forensic Medicine Institute to prepare a report on the applicant's case.

37. On an unspecified date the Forensic Medicine Institute requested the medical reports drawn up in respect of the applicant from the Fatih Criminal Court. It also requested that the applicant be sent to the Institute for a medical examination.

38. On 1 March 2005 the Fatih Criminal Court requested the medical reports concerning the applicant from the Istanbul Assize Court.

39. On 8 June and 20 October 2005 the first-instance court postponed the hearings since the Istanbul Assize Court had not responded to its request.

40. On 21 March 2006 the Fatih public prosecutor submitted to the court that the accused police officers' acts should be defined as torture under Article 243 of the former Criminal Code and that, therefore, the assize courts had jurisdiction to examine the case.

41. On the same day the Fatih Criminal Court issued a decision of non-jurisdiction and transmitted the case to the Istanbul Assize Court.

42. On 17 October 2006 the first hearing before the Istanbul Assize Court was taken up with procedural matters. The first hearing on the merits of the case was scheduled for 1 December 2006.

43. On 1 December 2006 the Istanbul Assize Court held that the criminal proceedings against the police officers should be discontinued on the ground that the prosecution was time-barred.

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. A description of the domestic law at the relevant time may be found in *Batı and Others v. Turkey* (nos. 33097/06 and 57834/00, §§ 95-99, ECHR

2004-IV(extracts)) and *Çobanoğlu and Budak v. Turkey* (no. 45977/99, §§ 29-30, 30 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF HAYDAR CEYLAN

45. The applicant in the second application, Haydar Ceylan, complained, under Articles 3 and 13 of the Convention, that he had been subjected to ill-treatment while in police custody and that the authorities had failed to punish those responsible for this.

The Court considers that these complaints should be examined from the standpoint of Article 3 alone, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

46. The Government submitted that the applicant’s complaint under Article 3 should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention. They maintained that the applicant had failed to lodge an appeal against the judgment of the Istanbul Assize Court.

47. The applicant contended in reply that under Article 102 § 4 of the former Criminal Code, taken together with Article 243 of the same Code, there was a five-year time-limit for prosecuting offences of ill-treatment and torture committed by civil servants. He submitted that, according to Article 104 § 2 of the former Criminal Code, the running of the statutory time-limits defined in Article 102 could be interrupted by a variety of events such as a conviction, an arrest, the detention and questioning of an accused and, in case of such an interruption, the time would start to run again from the date of the latest event. Yet the same paragraph stipulated that, anyway, the statutory time-limit could be extended for a maximum additional period of half the period prescribed in Article 102. Therefore, the statutory time-limit for the prosecution of offences of ill-treatment and torture had expired at the end of seven years and six months. The applicant contended that it was true that seven and a half years had elapsed since his ill-treatment in police custody and that, therefore, the assize court’s judgment was in accordance with Articles 102 and 104 of the former Criminal Code. The

applicant concluded that an appeal to the Court of Cassation would have been devoid of any chance of success in the circumstances of his case.

48. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness (see, for example, *Chitayev and Chitayev v. Russia*, no. 59334/00, § 134, 18 January 2007). The Court recalls that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-....).

49. In the instant case, the Court observes that the Istanbul Assize Court discontinued the proceedings brought against two police officers upon the applicant's complaint and that the applicant did not appeal that decision despite the fact that he had joined the proceedings as a civil party. The Court should therefore determine whether an appeal to the Court of Cassation, in the particular circumstances of the present case, would have constituted an effective remedy in respect of Haydar Ceylan's complaint under Article 3 of the Convention.

50. The Court notes that under Articles 102 and 104 of the Criminal Code in force at the material time, there was an absolute statutory time-limit in cases concerning ill-treatment of seven years and six months. The Court observes in this connection that seven years, six months and two weeks had indeed elapsed since the date of the alleged ill-treatment of the applicant when the Istanbul Assize Court discontinued the criminal proceedings brought against two police officers for being time-barred. The Court does not see why the applicant should have lodged an appeal and raised his allegations of ill-treatment once again before to the Court of Cassation whereas the latter could only uphold the judgment of the first-instance court, having regard to the absolute time-limits laid down in the former Criminal Code. Furthermore, the Government failed to offer any detailed explanation as to how an appeal to the Court of Cassation would provide redress for the applicant's complaints under Article 3. Nor did they submit a copy of the Court of Cassation's decisions in similar cases in support of their claim.

51. In the circumstances of the present case, the Court finds that an appeal to the Court of Cassation did not offer any prospect of success to Haydar Ceylan vis-à-vis his complaint under Article 3 of the Convention. The Court therefore rejects the Government's preliminary objection.

52. The Court notes that this complaint 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. The responsibility of the respondent State in the light of the substantive aspect of Article 3 of the Convention

53. The Government maintained that the Haydar Ceylan's allegations of ill-treatment were not substantiated. They submitted that the applicant had sustained injuries when the police officers had been obliged to use force to restrain him when he attempted to escape. The Government further contended that the applicant's account of events had not been consistent before the national courts and the Court. In sum, they submitted that the applicant's allegations of ill-treatment could not be proved beyond reasonable doubt.

54. Haydar Ceylan replied that he had submitted to the national authorities a detailed description of the ill-treatment which he had suffered. In particular, he had been punched, kicked, thrown to the floor and beaten, subjected to *falaka* (beating on the soles of the feet), hosed with water and forced to remain standing for long periods. Regarding the undated police report, without the applicant's signature, which stated that he had attempted to escape during his detention in the Gaziosmanpaşa police headquarters, the applicant denied such an attempt and submitted that this report was fraudulent.

55. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies, making no provision for exceptions, and no derogation from it is permissible under Article 15 § 2 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V). It recalls that where an individual is taken into custody in good health but is found to be injured by the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are supported by medical reports. Failing this, a clear issue arises under Article 3 of the Convention (see, among many others, *Selmouni*, cited above, § 87, and *Çelik and İmret v. Turkey*, no. 44093/98, § 39, 26 October 2004). In assessing such evidence, the Court has adopted the standard of proof "beyond reasonable doubt". Sufficient proof may, however, follow from the coexistence of adequately strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Hacı Özen v. Turkey*, no. 46286/99, § 46, 12 April 2007).

56. Furthermore, where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Hacı Özen*, cited above, § 47).

57. Turning to the circumstances of the present case, the Court observes at the outset that the applicant was not medically examined at the beginning of his detention in police custody and that there are three medical reports drawn up in his respect during his police custody period. The medical report of 19 April 1999 showed that the applicant had sustained bruising on his back, his left eyelid, and his left shoulder. The second medical report drawn up on 22 April 1999 showed that the applicant had injuries on his right eyebrow, on the left of his nose and on his left shoulder. The third and the final report of 25 April 1999 demonstrated that there were scars on the applicant's right eyebrow, on the left of his nose and his left shoulder (see paragraphs 20-22 above).

58. The Court notes that the parties did not dispute the findings of these medical reports. However, they put forward different versions as to how the applicant had actually sustained injury. Haydar Ceylan alleged that he had been ill-treated while in custody, whereas the Government alleged that the injuries had occurred when he had attempted to jump out of the window at the Gaziosmanpaşa police headquarters (see paragraph 18 above). The Government submitted a report drawn up and signed by three officers in support of that claim.

59. In this connection, the Court observes that the report submitted by the Government bears neither the applicant's signature nor a note of his refusal to sign it. It does not contain the date and time of drafting either. Furthermore, the body search report on 18 April 1999 at 1.45 p.m. does not include any detail regarding the applicant's resistance to the officers and the force used by them against him. Nor does it contain any indication that a second report would be prepared. The Court has difficulty in understanding why the alleged struggle was not noted on the body search report itself. Moreover, the findings of the medical reports match the applicant's allegations that he was beaten. The Court therefore does not find it convincingly proved that the applicant had sustained the injuries noted in the report of 19 April 1999 as a result of a legitimate use of force.

60. The Court further observes that the medical reports of 22 and 25 April 1999 contain findings which did not exist in the report of 19 April 1999, that is to say the scars on the applicant's right eye and on the left of his nose, and that the Government have not provided any explanation for these injuries.

61. The Court reiterates that States are responsible for the welfare of all persons held in detention. Such persons are in a vulnerable situation and the

authorities have a duty to protect them (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004). Bearing in mind the authorities' obligation to account for injuries caused to persons under their control in custody and in the absence of a convincing explanation by the Government in the instant case, the Court considers that the injuries recorded in the medical reports of 19, 22 and 25 April 1999 were the result of treatment for which the Government bore responsibility.

62. There has accordingly been a 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

63. The Government submitted that the domestic authorities had fulfilled their obligation to conduct an effective investigation into the applicant's allegations.

64. The applicant maintained that the investigation and the criminal proceedings brought against the police officers were not capable of being effective as the prosecution had become time-barred.

65. 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). This investigation should be independent, impartial and subject to public scrutiny. It should also be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII; *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports* 1996-VI; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

66. A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation of a particular situation. However, a prompt response by the authorities in investigating torture or ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Çelik and İmret*, cited above, § 55).

67. The Court has found above that the respondent State was responsible, under Article 3 of the Convention, for the injuries sustained by the applicant. An effective investigation was therefore required.

68. The Court observes that, on 25 April 1999, 3 March 2000 and 22 May 2002, the applicant maintained before the duty judge at the State Security Court and the court itself that he had been subjected to ill-treatment while detained in police custody. Despite the applicant's allegations, the judicial authorities failed to bring any criminal charges promptly. It was not

until more than three years later, following the lodging of a formal criminal complaint by the applicant's representative, that an investigation was initiated into the applicant's allegation. It then took the Fatih public prosecutor one year and three months to file a bill of indictment with the Fatih Criminal Court. The latter issued a decision of non-jurisdiction two years and six months after the initiation of the proceedings and seven years after the acts of ill-treatment had occurred. It then sent the case file to the Istanbul Assize Court, which decided to discontinue the proceedings during the first hearing on the merits of the case.

69. The Court observes that the proceedings in question have not produced any result due to these substantial delays, resulting in the application of the statutory limitations in domestic law (see *Abdülşamet Yaman v. Turkey*, no. 32446/96, § 59, 2 November 2004). It finds that the domestic authorities cannot be considered to have acted with sufficient promptness or diligence, which created virtual impunity for the main perpetrators of the acts of violence, despite the evidence against them (see *Batı and Others*, cited above, § 147).

70. In the light of the above, the Court concludes that the Haydar Ceylan's allegations of ill-treatment were not subject to an effective investigation by the domestic authorities as required by Article 3 of the Convention.

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

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

72. The applicants complained under Article 5 § 3 of the Convention that the length of their detention pending the criminal proceedings had been excessive. They further maintained under Article 5 § 4 of the Convention that there had been no effective domestic remedy to challenge the lawfulness of their detention. Finally, relying on Article 5 § 5 of the Convention, the applicants complained that they had not had an enforceable right to compensation for their excessively long detention. Article 5 provides insofar as relevant as follows:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

73. The Government asked the Court to dismiss the applicants’ complaint under Article 5 § 4 of the Convention for failure to exhaust domestic remedies as required by Article 35 § 1. Referring to the Court’s decisions in the cases of *Köse v. Turkey* (no. 50177/99, 2 May 2006) and *Baştımar v. Turkey* (no. 74337/01, 5 December 2006), the Government maintained that the applicants had failed to object to their continued detention pursuant to Articles 297-304 of the former Code of Criminal Procedure.

74. The applicants submitted that they had lodged objections in accordance with Articles 297-304 of the former Code of Criminal Procedure and that the remedy in question was ineffective.

75. The Court observes that on 15 April 2002 and 25 July 2005 the applicants objected to the orders for their continued detention using the remedy referred by the Government. It further considers that the issue concerning exhaustion of domestic remedies requires a determination to be made of the effectiveness of this remedy. As such, it is inextricably linked to the merits of the applicants’ complaint. It follows that this issue should be joined to the merits.

76. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

1. Article 5 § 3 of the Convention

77. The Government submitted that there had been a reasonable suspicion that the applicants had taken part in terrorist activities which persisted throughout the proceedings. They further maintained that the applicants’ detention on remand had also been necessary to prevent them from absconding, committing a further offence and removing evidence.

78. The applicants maintained their allegation.

79. The Court notes that, when calculating the period to be taken into consideration, the multiple, consecutive detention periods of the applicants should be regarded as a whole. In addition, while assessing the reasonableness of the length of the applicants’ detention on remand, it should make a global evaluation of the accumulated periods of detention under Article 5 § 3 of the Convention (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-... (extracts)). Consequently, after deducting the period when the applicants were detained after conviction under Article 5 § 1 (a) of the Convention – namely the period between 22 May

2002 and 17 April 2003 – from the total time that they were remanded in custody pending trial, the period to be taken into consideration in the instant case is more than six years and eleven months.

80. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present applications (see, for example, *Gökçe and Demirel v. Turkey*, no. 51839/99, § 45, 22 June 2006; *Solmaz*, cited above; *Bayam v. Turkey*, no. 26896/02, § 20, 31 July 2007).

81. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that in the instant case the length of the applicants' detention on remand was excessive.

82. There has accordingly been a violation of Article 5 § 3 of the Convention.

2. Article 5 § 4 of the Convention

83. The Government submitted that the applicants' complaint under this provision was manifestly ill-founded.

84. The applicants maintained their allegation.

85. The Court observes at the outset that the applicants requested to be released pending trial several times before the State Security Court and the Assize Court, which dismissed all such requests. The trial courts therefore had the opportunity to end the applicants' lengthy detention on remand and to avoid or redress the alleged breach of the Convention (see *Acunbay v. Turkey*, nos. 61442/00 and 61445/00, § 48, 31 May 2005 and, *Mehmet Şah Çelik v. Turkey*, no. 48545/99, § 26, 24 July 2007).

86. The Court further notes that it has already found that the remedy provided by Articles 297-304 of the former Code of Criminal Procedure, whereby the applicants could object to decisions ordering their continued detention, offered little prospect of success in practice, and that it did not provide for a procedure which was genuinely adversarial for the accused (see *Koştı and Others v. Turkey*, no. 74321/01, § 22, 3 May 2007; *Bağrıyanık v. Turkey*, no. 43256/04, §§ 50 and 51, 5 June 2007; *Doğan Yalçın v. Turkey*, no. 15041/03, § 43, 19 February 2008).

87. In the present case, there is no element which would require the Court to depart from its previous findings. The Court therefore concludes that there was no remedy in domestic law, within the meaning of Article 5 § 4, by which the applicants could have challenged the lawfulness of their detention.

88. The Court accordingly dismisses the Government's preliminary objection based on non-exhaustion of domestic remedies and concludes that there has been a violation of Article 5 § 4 of the Convention.

B. Article 5 § 5 of the Convention

89. The Government submitted under this head that the applicants' detention on remand had been necessary and in accordance with domestic law.

90. The applicants maintained their allegation and submitted that there was no remedy whereby they could claim compensation for the damage they had suffered as a result of the excessive length of their detention on remand.

91. The Court notes that it has found a breach of Article 5 § 3 of the Convention in the present case which would entitle the applicants to compensation under paragraph 5 of this provision. In this connection, the Court recalls that it has already found that there was no remedy in Turkish law whereby a person could claim compensation for damage suffered as a result of detention on remand which had exceeded a "reasonable time" in breach of Article 5 § 3 (see, for example, *Çiçekler v. Turkey*, no. 14899/03, § 65, 22 December 2005, and *Cahit Solmaz v. Turkey*, no. 34623/03, § 47, 14 June 2007).

92. In the present case, there is no element which would require the Court to depart from its previous findings. The Court therefore concludes that the applicants did not have an enforceable right to compensation.

93. There has accordingly been a violation of Article 5 § 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

94. The applicants complained of the length of the criminal proceedings brought against them. They relied on Article 6 § 1 which provides as relevant:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

95. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

96. The Government maintained that, in the circumstances of the present case, the length of the criminal proceedings could not be considered to have

been unreasonable. In this respect they referred to the number of defendants who had been on trial for terrorism-related offences. The Government further submitted that the applicants and the other defendants had contributed to the prolongation of the proceedings by requesting extensions for the submission of their defence. Finally, they maintained that there was no delay in the proceedings which could be attributed to the authorities.

97. The applicants maintained their allegations.

98. The Court observes that the period to be taken into consideration began on 18 and 19 April 1999, when the applicants were arrested and taken into police custody and, according to the information in the case file, were still pending on the date of the adoption of the present judgment. The period under consideration has thus lasted nine years and seven months before two levels of jurisdiction.

99. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, and the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

100. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, for example, *Sertkaya v. Turkey*, no. 77113/01, § 21, 22 June 2006; *Hasan Döner v. Turkey*, no. 53546/99, § 54, 20 November 2007; *Uysal and Osal v. Turkey*, no. 1206/03, § 33, 13 December 2007).

101. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present application. Having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

102. There has accordingly been a breach of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

103. The applicants further complained that there were no domestic remedies available under Turkish law for the excessive length of the criminal proceedings against them. They relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

104. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

105. The Government did not comment on this complaint.

106. The applicants maintained their allegations.

107. The Court has examined similar cases on previous occasions and has found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicants could have contested the length of the proceedings at issue (see *Bahçeyaka v. Turkey*, no. 74463/01, §§ 26-30, 13 July 2006, and *Tendik and Others v. Turkey*, no. 23188/02, §§ 34-39, 22 December 2005). It finds no reason to depart from that conclusion in the present case.

108. There has accordingly been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. Cem Demirbaş claimed 20,000 euros (EUR) and Haydar Ceylan and Binnaz Demirbaş claimed EUR 40,000 each in respect of non-pecuniary damage. Cem Demirbaş further claimed EUR 20,000 in respect of pecuniary damage.

111. The Government contested the applicants' claims.

112. The Court notes that it has found violations of Articles 3, 5 §§ 3, 4 and 5, 6 § 1 and 13 of the Convention in respect of Haydar Ceylan. Regarding Cem Demirbaş and Binnaz Demirbaş, the Court has found violations of Articles 5 §§ 3, 4 and 5, 6 § 1 and 13 of the Convention. The Court considers, on the one hand, that the finding of a violation in respect of Article 5 §§ 4 and 5, and Article 13 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the

applicants. On the other hand, the Court accepts that non-pecuniary damage suffered on account of the violations of Articles 3, 5 § 3 and 6 § 1 of the Convention cannot be compensated solely by the findings of violations. Making its assessment on an equitable basis, the Court awards Haydar Ceylan EUR 17,500 in respect of non-pecuniary damage. It further awards Cem Demirbaş and Binnaz Demirbaş EUR 7,500 each under this head.

113. As regards the alleged pecuniary damage sustained by Cem Demirbaş, the Court observes that he did not produce any document in support of his claim, which the Court, accordingly, dismisses.

B. Costs and expenses

114. The applicants also claimed EUR 3,995 jointly for legal expenses incurred before the Court and for other expenses, such as stationery, photocopying and postal costs. In support of their claims, the applicants submitted the legal fees agreement concluded with their lawyer and invoices demonstrating that they had paid EUR 1,250 each to their representative.

115. The Government maintained that only expenses actually incurred can be reimbursed. In this connection, they submitted that all costs and expenses must be documented by the applicants. Finally, they contended that the applicants should have based themselves on the minimum fees established by the Turkish Bar Association when claiming legal costs.

116. 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 information in its possession and the above criteria, the Court considers it reasonable to award EUR 1,250 to Haydar Ceylan, as well as EUR 1,000 to Cem Demirbaş and Binnaz Demirbaş, each, under this head.

C. Default interest

117. 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 remainder of the applications admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant Haydar Ceylan;

In respect of all applicants:

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
7. *Holds* that there has been a violation of Article 13 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement:
 - (i) EUR 17,500 (seventeen thousand five hundred euros) to Haydar Ceylan, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,500 (seven thousand five hundred euros) to Cem Demirbaş and Binnaz Demirbaş, each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 1,250 (one thousand two hundred and fifty euros) to Haydar Ceylan, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (iv) EUR 1,000 (one thousand euros) to Cem Demirbaş and Binnaz¹ Demirbaş, each, plus any tax that may be chargeable to the applicants, in respect of cost 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;

1. Rectified on 12 February 2009: The applicant's name read "Binna" in the former version of the judgment.

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

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President