



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

SECOND SECTION

CASE OF AMER v. TURKEY

(Application no. 25720/02)

JUDGMENT

*This version was rectified on 6 March 2012
under Rule 81 of the Rules of Court*

STRASBOURG

13 January 2009

FINAL

06/07/2009

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

In the case of Amer 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 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 25720/02) 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 dual Sudanese-Bulgarian national, Mr Yasir¹ Amer (“the applicant”), on 14 June 2002.

2. The applicant was represented by Mr Boyra Baysan, a lawyer practising in Nicosia in the “Turkish Republic of Northern Cyprus” (the “TRNC”). The Turkish Government (“the Government”) were represented by their Agent.

3. Relying on Article 5 § 2 of the Convention the applicant alleged that he had not been promptly informed of the reasons for his arrest. Under Article 6 he alleged, in particular, that he had not been provided with an interpreter to enable him to understand the accusations against him.

4. On 5 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Bulgarian Government did not make use of their right to intervene under Article 36 § 1 of the Convention.

¹ Rectified on 6 March 2012. The applicant’s first name reading “Yassir Faathelrahman” was changed.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1969 and is currently serving a prison sentence in the “TRNC”.

A. Introduction

7. On 29 May 2001 a businessman was found dead in his office in the “TRNC”. His throat had been slit and there were also a number of injuries to his head caused by blows. According to the autopsy report, the businessman had been killed in his office between 8 p.m. and 10.45 p.m. on 29 May 2001.

8. The remaining facts of the case are disputed by the parties and are set out separately. The facts as presented by the applicant are set out in Section B below (paragraphs 9-22). The Government’s submissions concerning the facts are summarised in Section C below (paragraphs 23-32). The documentary evidence submitted by the applicant and the Government is summarised in Section D (paragraphs 33-46).

B. The applicants’ submissions on the facts

9. The applicant, his wife and their two children moved to the “TRNC” in 1997 and the applicant opened two shops, selling musical equipment. The applicant did not speak much Turkish.

10. At around midnight on 29 May 2001 the applicant was arrested at his home by police officers. He was asked to drive to the Central Police Station in his own car, accompanied by a police officer. On his arrival at the police station he was handcuffed, questioned by the director of the police station and his fingerprints were taken. When the applicant asked the police why he had been arrested, he received no answers.

11. The following morning, namely 30 May 2001, the police brought in Mr M.E. and Mr W.F., two Egyptian students who had arrived in the “TRNC” three months previously.

12. On 2 June 2001 the applicant was brought before a judge who ordered his detention for an additional period of eight days.

13. The same day the applicant was interviewed by Mr Z.A., a police investigator, who told the applicant that, in the opinion of the police, Mr M.E. was the murderer. Police investigator Mr Z.A. then questioned the applicant and recorded his statement on a piece of paper which he asked the applicant to sign. The applicant did not understand what was written in the

statement because the handwriting was illegible and his Turkish was not sufficient. He asked for an interpreter. But when police investigator Mr Z.A. told him that there was nothing in the statement that he should be afraid of, and that his lawyer would translate it for him the following morning, the applicant signed the statement. Police investigator Mr Z.A. then persuaded the applicant to write something in Turkish on another piece of paper and sign. He told the applicant that he would be released the following morning.

14. On 3 June 2001 the applicant was taken to the office of Mr E.D., the chief of police. Mr H.M., who had been appointed as the applicant's legal representative, was also present in the room. The chief of police told the applicant that he believed that the applicant and Mr M.E. (see paragraph 11 above) were the murderers. When the applicant protested his innocence, the police chief threatened him. The applicant was then handcuffed and taken back to his cell. Throughout this time the applicant's lawyer Mr H.M. stayed quiet and did not intervene.

15. The same day the applicant was taken to another room to see police investigator Mr Z.A., who had questioned him the previous day. Mr Z.A. and a number of other police officers told the applicant that they knew about the confession the applicant had made to the chief of police Mr E.D. earlier in the day, and asked him to sign that confession which had since been written on a piece of paper. The applicant refused to sign it and asked for his lawyer. When his lawyer Mr H.M. came into the room the applicant asked police investigator Mr Z.A. to read to his lawyer the statements he had signed the previous day. This request was refused by Mr Z.A., who stated that it was against their rules. The applicant was then taken back to his cell.

16. The applicant was detained in the police station until he was brought before the judge and charged on 22 June 2001. This time an interpreter was present in the courtroom and the applicant rejected the allegations against him. The judge remanded the applicant in custody and transferred him to a prison where he would be held until the end of the criminal proceedings.

17. The trial began before the Lefkoşa Assize Court ("the trial court"). In the course of the trial the applicant dismissed his lawyer and instructed another lawyer, Mr M.A., to represent him.

18. During one of the hearings the applicant's lawyer Mr M.A. objected to the trial court's adding the statements taken from the applicant in police custody to the case file, arguing that they had been taken in the absence of an interpreter. When this request was rejected the lawyer Mr M.A. withdrew from representing the applicant. Despite the applicant's wish to represent himself in the proceedings, the trial court appointed Mr B.B. as his legal representative.

19. On 4 March 2002 the applicant was found guilty as charged and sentenced to life imprisonment. He appealed.

20. The Court of Appeal adjourned the initial hearing four times and did not begin the examination of the case until 2005. It upheld the applicant's conviction in 2006.

21. The prison where the applicant had been detained until his conviction in 2002 had been overcrowded. On occasion, single beds had had to be used to accommodate two persons. After he was transferred to another prison following his conviction, he was detained in solitary confinement on one occasion. On 8 May 2007 special police forces had carried out an operation in the prison and had ill-treated the inmates. The applicant had been ill-treated more seriously than his fellow inmates.

22. Although he had written to a number of authorities and complained about the circumstances of his detention, nothing was done to remedy them. The authorities to whom he had sent letters of complaints included the Sudanese Embassy in Ankara, the Prime Minister, the Ministry of the Interior and the prison administration.

C. The Government's submissions on the facts

23. On the night of the murder the police received information from the deceased person's family that the deceased had gone to his office to meet with the applicant. The police then went to the applicant's home the same evening and summoned him to the police station to help the police with their investigation into the murder. The applicant drove to the police station in his own car, accompanied by a police officer. The applicant was not arrested; he was merely kept in the police station to ensure the efficacy of the investigation.

24. The same evening the investigating officer Mr Z.A. took an "open statement" – a statement taken without a caution as the applicant had not yet been treated as an accused – from the applicant (see paragraph 34 below). All that time the conversation was in Turkish because the applicant had sufficient knowledge of Turkish and never asked for an interpreter. In fact, an interpreter was present but the applicant did not want his services, insisting that his Turkish was sufficiently good.

25. According to the "TRNC" legislation, any detained person must be brought before a judge within twenty-four hours. The person can then be detained in police custody for a period of up to three months but a judge reviews the detention every eight days.

26. When the applicant was brought before the judge on 2 June 2001, the police explained to the judge, in Turkish, the reasons for the applicant's detention. The applicant did not complain to the judge that he did not speak Turkish.

27. On 3 June 2001 the applicant made an oral confession in front of Mr E.D., the chief of police. This meeting was arranged by the applicant's

lawyer Mr H.M. who in turn must have been instructed to do so by the applicant.

28. During the hearings held in the course of the trial the applicant gave evidence in Turkish, even though an interpreter was present in the courtroom.

29. Although the applicant was sentenced to life imprisonment, according to the applicable legislation in force at the time he will spend a total of eight years in prison.

30. Initially the date of 26 May 2004 was fixed as the date of the first appeal hearing but the Court of Appeal had to postpone it until 1 November 2004 on account of the illness of the applicant's lawyer. The hearing was once again postponed on 1 November 2004 as the applicant's lawyer had still not recovered from his illness. The new date for the first hearing was set as 15 June 2005. Nevertheless, on 15 June 2005 the applicant turned up at the Court of Appeal without a lawyer and the hearing had to be postponed once more, this time until 21 September 2005.

31. Subsequently, the Court of Appeal held hearings between 17 and 21 October 2005 and then between 7 and 11 November 2005. The decision of the Appeal Court was pronounced on 2 March 2006.

32. When the applicant complained of headaches and problems with his eyesight, he was medically examined in 2007 and 2008 and a number of tests were carried out. According to the medical reports prepared at the end of these examinations, there were no traces of haemorrhage. The applicant was referred to a rheumatology specialist.

D. Documentary evidence submitted by the parties

33. The applicant was questioned by police investigator Mr Z.A. on 30 May 2001 and 2 June 2001. According to the statements, no lawyer or interpreter was present on these occasions.

34. In the statement taken between 3.40 a.m. and 4.50 a.m. on 30 May 2001, the applicant was recorded as having stated that he knew the businessman and that he had cashed two cheques in the businessman's office on 25 May 2001. In order for the first cheque to be cleared the applicant needed to deposit the money in the bank on 30 May 2001. On 29 May 2001 the businessman had telephoned him on a number of occasions and asked him to bring the money back to him at his office. He would then return the cheque to the applicant instead of having to take it to the bank himself the following day. The last telephone call had been made at 9.20 p.m. on 29 May and the applicant had told the businessman that "he might come". However, at 9.30 p.m. the applicant had gone to bed but was arrested at 11 p.m. by police officers. There is no mention in this statement of the killing of the businessman or of any other offence.

35. In the statement taken between 10.30 p.m. on 2 June 2001 and 1.50 a.m. on 3 June 2001, the applicant was recorded as having stated that on 29 May 2001 he had gone home at 8.30 p.m. and seen Mr M.E. (see paragraph 11 above) outside his house. He had told Mr M.E. that the businessman was waiting for him and had then gone into the house. When he had come out of the house Mr M.E. had already gone. Between 9 p.m. and 9.15 p.m. Mr M.E. had telephoned the applicant and said that he was at the businessman's office and that the alarms were ringing. The applicant had then gone to that office and seen Mr M.E. waiting outside. Mr M.E. had then told the applicant that he had gone inside and hit the businessman with a wooden stick and had then tried unsuccessfully to open the safe. When the businessman regained consciousness Mr M.E. had stabbed him. When the applicant said "Don't tell me you killed him", Mr M.E. replied "Yes he died; he did not survive".

36. In his statements to the police Mr M.E. was recorded as having stated that the applicant had killed the businessman on his own.

37. On 22 June 2001 the police investigator Mr Z.A. read out the charges against the applicant. This time an interpreter was also present. The applicant denied the allegations and stated that this was the first time he was hearing them. A statement to that effect was drafted and signed by the applicant.

38. On 25 September 2001 hearings began before the trial court. The applicant was charged with fourteen offences, which included, *inter alia*, premeditated murder, violence, robbery and the possession of prohibited weapons, including firearms. The trial court heard forty-five prosecution and nine defence witnesses. The prosecution submitted fifty-three items of evidence.

39. The trial court had regard to the two defendants' statements and decided to disregard those statements in which they implicated each other. The chief of police Mr E.D. testified before the trial court and said that the applicant had gone to his office and confessed to the murder.

40. In the course of the trial the police investigator Mr Z.A. told the trial court that when he had questioned the applicant on 30 May 2001 an interpreter had been present, but that the applicant had preferred to give his statement in Turkish. Another police officer told the trial court that he spoke Arabic and was present at the police station on 30 May 2001. Nevertheless, the applicant had not wanted his assistance, insisting instead on giving his statement in Turkish.

41. During a hearing held on 8 October 2001 the applicant told the trial court that he could speak Turkish but did not have "a complete knowledge of the Turkish language". He could not write in Turkish at all and his reading in Turkish was poor. He added that, in the early hours of 30 May 2001 the police investigator Mr Z.A. had hand-drafted the statement and had asked him to sign it. When he had told Mr Z.A. that he did not know

what was written in it, Mr Z.A. had convinced him to sign the statement by telling him that there was nothing in the statement which could harm him.

42. During a hearing held on 23 January 2002 the applicant preferred to be cross-examined in Turkish. He told the trial court that if he did not understand a question he would ask the interpreter who was already present in the courtroom. He also told the trial court that, although he could speak Turkish, he would not be able to write in Turkish. Furthermore, he could only read typed texts in Turkish but not handwritten texts.

43. On 4 March 2002, in its sixty-eight page judgment, the trial court found the applicant and the co-accused not guilty on the charge of premeditated murder, but guilty of the offence of manslaughter and thirteen other counts. It sentenced them both to life imprisonment. In reaching its decision the trial court had particular regard to the testimony of the chief of police Mr E.D (see paragraphs 14 and 27 above) and the statements taken from the applicant on 30 May 2001 and 2 June 2001.

44. On 22 March 2002 the applicant appealed against his conviction and argued, in particular, that the trial court had been wrong in admitting in evidence the statements taken from him by police investigator Mr Z.A.; it was obvious that his knowledge of the Turkish language was very limited, but despite this he had not been given the assistance of an interpreter when questioned by Mr Z.A.

45. The first hearing which the Court of Appeal had scheduled for 15 June 2005 was postponed until 21 September 2005 because one of the judges was on holiday abroad. On 21 September 2005 it postponed the hearing until 17 October 2005. After six more postponements, the Court of Appeal began holding hearings on 7 November 2005.

46. On 2 March 2006 the Court of Appeal upheld the judgment of the trial court. It ruled that the trial court had carried out an adequate examination of the evidence, heard the witnesses and found it established beyond reasonable doubt that the applicant was guilty. In the Court of Appeal's 32-page decision there was no mention of the applicant's complaint concerning the lack of an interpreter when he was questioned by the police.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

47. The Government disputed Turkey's liability under the Convention for the violations alleged in the application. They claimed that the acts complained of were imputable exclusively to the "TRNC", an independent

and sovereign State established by the Turkish-Cypriot community in the exercise of its right to self-determination. In particular, the Government submitted that there was no allegation of involvement of Turkish authorities in the judicial proceedings before the independent courts of the “TRNC” which are the subject matter of the present application.

48. The Court reiterates the findings of its previous judgments in which the respondent Government’s similar objections were dismissed (see, *inter alia*, *Loizidou v. Turkey* ((preliminary objections), judgment of 23 March 1995, Series A no. 310, and (merits), judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI; *Djavit An v. Turkey*, no. 20652/92, §§ 18-23, ECHR 2003-III). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned judgments.

49. Accordingly, the Court dismisses the Government’s objection and concludes that the matters complained of in the instant application fall within the “jurisdiction” of Turkey within the meaning of Article 1 of the Convention and therefore entail the respondent State’s responsibility under the Convention (see, *mutatis mutandis*, *Djavit An*, cited above, § 23).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained that he had been kept in wretched conditions in prison which had been overcrowded. He had also been kept in solitary confinement and had had no means of communication with the outside world. On 8 May 2007 special police forces had carried out an operation in the prison and had allegedly ill-treated him. In respect of these complaints he relied on Article 3 of the Convention which provides as follows:

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

51. The Government contested that argument.

Admissibility

52. The Government submitted that the applicant had failed to comply with the requirement to exhaust domestic remedies. The domestic courts were best suited to hear such claims, examine witnesses and consider and evaluate medical and other evidence. The Government further argued that the complaints under Article 3 of the Convention were manifestly ill-founded.

53. The applicant maintained that he had complied with the obligation to exhaust domestic remedies. He had sent a letter to the Sudanese Embassy in Ankara, numerous letters to a number of newspapers and various “TRNC”

authorities, including, in particular, the Prime Minister, the Ministry of the Interior and the prison administration. He and a number of inmates had also submitted joint petitions to the prison administration at the Ministry of the Interior on various dates.

54. The Court does not deem it necessary to examine whether the applicant complied with the obligation to exhaust domestic remedies since it notes that the complaint is in any event inadmissible as being manifestly ill-founded for the following reason.

55. The Court reiterates that, to fall within the scope of Article 3 of the Convention, the alleged treatment must attain a minimum level of severity (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). In the present case there is no indication that the treatment complained of reached the threshold of severity bringing the matter within the scope of Article 3 of the Convention (see *Panayiotis Kyriacou Tsiakkourmas v. Turkey* (dec.), no. 13320/02, 20 May 2008).

56. It follows that this complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

57. The applicant maintained that, following his arrest by the police on 29 May 2001, he had not been promptly informed of the reasons for his arrest, in violation of Article 5 § 2 of the Convention which provides as follows:

“Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”

58. The Government contested that argument.

59. The Court observes that the applicant’s police custody ended on 22 June 2001 (see paragraph 16 above) when he was brought before a judge and charged. On that occasion there was an interpreter present. It is clear therefore that by that date the applicant had been informed of the matters which led to his prosecution. However, he did not lodge his application with the Court until 14 June 2002. It does not appear that he subsequently tried to use any domestic remedy in respect of this complaint which could have stopped the running of the six-month period. He thereby failed to observe the six-month rule laid down in Article 35 § 1 of the Convention in respect of this complaint. This aspect of the case must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention (see, *mutatis mutandis*, *Ivan Vasilev v. Bulgaria*, no. 48130/99, §§ 83-84, 12 April 2007; *Čonka v. Belgium*, no. 51564/99, §§ 50-52, ECHR 2002-I).

IV. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

60. The applicant complained that he had not been provided with an interpreter to enable him to understand the accusations against him. Furthermore, the appeal proceedings had lasted an excessively long time. Moreover, the presiding judge had not conducted the hearings in an impartial manner and that the trial court had not adequately examined his alibi. Finally, although the trial court had been unable to establish who had actually committed the murder, it had convicted both him and his co-accused and imposed the same sentence on both of them. In respect of these complaints the applicant relied on Article 6 of the Convention which provides, in so far as relevant, as follows:

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

3. Everyone charged with a criminal offence has the following minimum rights: ...

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

61. The Government contested those arguments.

A. Admissibility

62. The Government pointed to the fact that the application had been introduced with the Court before the appeal was decided by the Court of Appeal, and argued that the applicant had thus failed to comply with the requirement to exhaust domestic remedies.

63. The applicant did not deal specifically with this issue other than to dispute it in general terms.

64. The Court observes that the criminal proceedings were concluded on 2 March 2006, that is before the Court is called upon to pronounce on the admissibility of the present case (see, *mutatis mutandis*, *Sağat, Bayram and Berk v. Turkey* (dec.), no. 8036/02, 8 March 2007, and *Yıldırım v. Turkey* (dec.), no. 40074/98, 30 March 2006). It follows therefore that the Government's objection to the admissibility of the complaints under Article 6 of the Convention must be dismissed.

65. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *Complaint concerning the length of the criminal proceedings*

66. The applicant complained that the length of the criminal proceedings against him, in particular the appeal proceedings, had been in breach of the reasonable time requirement of Article 6 § 1 of the Convention.

67. In the opinion of the Government the delays in the appeal proceedings were not attributable to them but to the applicant and his co-accused.

68. The Court observes that the criminal proceedings against the applicant began on 29 May 2001 when he was taken to the police station, and were completed on 2 March 2006 when the Court of Appeal pronounced its decision. They thus lasted for just over four years and nine months before two levels of jurisdiction.

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

70. Although, as pointed out above, the proceedings were completed in less than five years, the Court cannot overlook the fact that a lengthy period of four years elapsed between 22 March 2002 when the appeal was lodged by the applicant, and 2 March 2006 when the Court of Appeal rendered its decision.

71. The prolonged illness of the applicant's lawyer undoubtedly contributed to the total length of the appeal proceedings. Nevertheless, it is also to be observed that no justification was proffered by the Government as to why the first appeal hearing was scheduled some two years after the appeal had been lodged (see paragraphs 44-45 above). Furthermore, contrary to what was submitted by the Government (see paragraph 30 above), the hearing of 15 June 2005 was postponed until 21 September 2005, not because the applicant had turned up at the Court of Appeal without a lawyer, but because one of the judges was on holiday abroad (see paragraph 45 above). Moreover, the Court cannot but note that after 21 September 2005 the appeal hearings were postponed on seven more occasions (see paragraph 45 above).

72. In the absence of any explanation, these delays must be considered to be attributable to a lack of diligence in the Court of Appeal's handling of the proceedings.

73. Having regard to its case-law on the subject, the Court finds that the length of the proceedings was excessive and failed to meet the "reasonable

time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

2. Complaint concerning the applicant’s right to an interpreter

74. The applicant alleged that the police investigator Mr Z.A. had taken advantage of his lack of knowledge of the Turkish language and had recorded in the statements of 30 May and 2 June 2001 things that he had never said during the questioning. When he had told Mr Z.A. that he could not read the statements and refused to sign them, Mr Z.A. had persuaded him by telling him that his lawyer could translate the statements for him the following day. Nevertheless, Mr Z.A. had subsequently not allowed the lawyer to do that. When Mr Z.A. drafted the statements neither an interpreter nor the applicant’s lawyer had been present. Furthermore, Mr Z.A.’s handwriting was so illegible that even a native Turkish speaker would have found it difficult to read the statements.

75. The Government submitted that the applicant knew the Turkish language quite well and had not requested an interpreter. If he had requested an interpreter, he would have been provided with one. In any event, an interpreter and a police officer who spoke Arabic had been present when the applicant was questioned on 30 May 2001, but the applicant had rejected their assistance.

76. During the trial an interpreter had been present in the court-room but the applicant had given his testimony in Turkish.

77. The Court reiterates at the outset that the right guaranteed by Article 6 § 3 (e) of the Convention to the free assistance of an interpreter is not only applicable when making oral statements at hearings in the course of a trial, but also to documentary material and the pre-trial proceedings. This means that, to ensure a fair trial, an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the criminal proceedings which it is necessary for him or her in order to understand or to have rendered into the court’s language (see *Luedicke, Belkacem and Koç v. Germany*, judgment of 28 November 1978, Series A no. 29, § 48).

78. The issue of a defendant’s linguistic knowledge and the nature of the offence with which the defendant is charged are vital for the Court’s examination of the complaints made under this provision (see *Hermi v. Italy*, no. 18114/02, § 71, 28 June 2005 and the case cited therein).

79. In the present case it is to be observed that serious accusations were being levelled against the applicant when he was questioned at the police station. Indeed, both the statement of 30 May and the statement of 2 June 2001 were to become crucial for his case and to be heavily relied on by the trial court in convicting him.

80. Nevertheless, despite their importance for the domestic proceedings, neither statement makes any mention of an interpreter having been present when the applicant was questioned or the applicant having rejected that interpreter's assistance, as claimed by the Government.

81. It is also crucial to note that when these statements were drafted by the police investigator Mr Z.A., the applicant was not accompanied by a lawyer. It follows, therefore, that the applicant was questioned and his prejudicial statements were drafted when he was deprived of an important Convention safeguard.

82. The Court notes that the applicant is not a native speaker of the Turkish language. However, as submitted by the Government and as accepted by the applicant, he did speak some Turkish. Nevertheless, it is equally important to note the applicant's undisputed claim that he was unable to read Turkish texts, especially if they were not typed (see paragraphs 41-42 above). In this connection the Court finds that the handwritten statements in question are indeed difficult to decipher, even by native Turkish speakers.

83. In the Court's opinion, the verification of the applicant's need for interpretation facilities at the time of his questioning by the police should have been a matter for the domestic courts to adequately examine with a view to reassuring themselves that the absence of an interpreter in police custody would not have prejudiced the applicant's right to a fair trial (see, *mutatis mutandis*, *Cuscani v. the United Kingdom*, no. 32771/96, § 38, 24 September 2002). To that end, sufficient indication had been given to the domestic courts by the applicant and his lawyers as to his inability to read Turkish texts. In this connection it must also be noted that the applicant, when assisted by an interpreter on 22 June 2001, stated that this was the first time he had heard the accusations against him.

84. Having regard to the above considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (e).

3. Remaining complaints under Article 6 of the Convention

85. The applicant also complained that the presiding judge had not conducted the hearings in an impartial manner. Furthermore, the trial court had not adequately examined his alibi. Moreover, although the trial court had been unable to establish who had actually committed the murder, it had convicted both him and his co-accused and imposed the same sentence on both of them.

86. Having regard to its finding under Article 6 § 1 of the Convention taken in conjunction with 6 § 3 (e) (see paragraph 84 above), the Court considers that it is not necessary to examine these complaints separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed vague sums in respect of, *inter alia*, his loss of earnings, his properties and cars which had apparently been repossessed after his detention in prison. He also asked that rent paid by his family while he was detained in prison, tax arrears owed to the domestic authorities and loans he had to take out to pay for his family’s living expenses also be compensated. The applicant submitted that his total losses in respect of the above had exceeded 1,000,000 euros (EUR). He also asked the Court, without specifying the amount, to award him non-pecuniary damage.

89. The Government contested the claims and argued that they were irrelevant to the case.

90. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 5,000 in respect of non-pecuniary damage.

91. The Court reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he would have been had this provision not been disregarded (see *Saldüz v. Turkey* [GC], no. 36391/02, § 72, 27 November 2008, and the cases cited therein). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be the retrial of the applicant in accordance with the requirements of Article 6 § 1 of the Convention, should he so request (see, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

B. Costs and expenses

92. The applicant claimed 12,500 US dollars in respect of the fees of two of his lawyers who represented him before the domestic courts. In support of these claims he referred to the verbatim records of the hearings before the trial court. According to those records, secretaries working for the two lawyers told the trial court that the applicant had paid 12,500 US dollars to the two lawyers to represent him before the domestic courts. The secretaries also confirmed that receipts had been given to the applicant in

respect of these payments. The applicant did not submit those receipts to the Court.

93. The applicant did not make a claim for his costs and expenses incurred before the Court. Instead, he submitted that he had asked the Court to grant him legal aid in respect of the lawyer who represented him in the proceedings before the Court.

94. The Government contested the claims and argued that no receipts had been submitted in support of the claims for the fees of his lawyers who had represented him before the domestic courts.

95. The Court would wish to clarify at the outset that, on 7 May 2008 the applicant, with the assistance of his lawyer, requested that he be granted legal aid under the Council of Europe's legal aid scheme. On 20 May 2008 the Registry provided the lawyer with the necessary documentation and asked him to fill in and return the necessary forms to the Court by 16 June 2008. No further correspondence has been received from the lawyer or the applicant since that date.

96. 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 – in particular the verbatim records referred to in paragraph 92 – and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

97. 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 complaints under Article 6 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (e);

4. *Holds* that there is no need to examine separately the remaining complaints under Article 6 of the Convention;
5. *Holds* that
 - (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, the following amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President