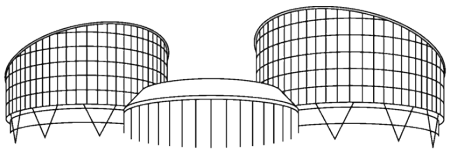

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KARAMAN v. GERMANY

(Application no. 17103/10)

JUDGMENT

STRASBOURG

27 February 2014

FINAL

07/07/2014

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

In the case of Karaman v. Germany,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 14 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 17103/10) against the Federal Republic of Germany 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 Zekeriya Karaman ("the applicant"), on 22 March 2010.

2. The applicant was represented by Mr O. Isfen, a lawyer practising in Wetter, North Rhine-Westphalia. The German Government ("the Government") were represented by their Agent, Mr H.-J. Behrens, *Ministerialrat*, of the Federal Ministry of Justice.

3. The applicant alleged under Article 6 § 2 of the Convention that references to his participation in a criminal offence in a judgment rendered against separately prosecuted co-suspects violated his right to be presumed innocent.

4. On 18 October 2012 the application was communicated to the Government.

5. The applicant and the Government each filed observations on the admissibility and merits of the application. The Turkish Government, who had been informed of their right to intervene under Article 36 of the Convention, did not make use of this right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. The applicant was born in 1952 and lives in Istanbul. He is the founder of the Turkish TV station Kanal 7 and director of the management board of its operating company Yeni Dünya Iletisim A.S. Kanal 7's programme contents are broadcast nationwide in Turkey and in Germany through the TV station Kanal 7 Int. The latter is operated by private limited-liability companies established under German law and, since 2001, by Euro 7 Fernseh- und Marketing GmbH (*Gesellschaft mit beschränkter Haftung*) with the applicant as one of its shareholders. The applicant alternately occupied the position of managing director (*Geschäftsführer*) or authorised signatory (*Prokurist*) in such companies.

7. Since 1998 a specific programme slot in the channel's broadcasting schedule had been allocated to the non-profit association Deniz Feneri Yardimlasma Dernegi, founded, *inter alia*, by the Kanal 7 head of human resources who was also a member of the association's board of directors. During that programme, broadcast in Turkey and in Germany, the association reported on charitable aid projects being run by it and appealed for monetary donations. In 1999 a similar association was founded in Germany under the name of Deniz Feneri Dernegi e.V. (hereinafter "Deniz Feneri") by G., one of the other shareholders and managing directors or, alternately, authorised signatories of Euro 7 Fernseh- und Marketing GmbH. G. was also appointed chairman of the association and remained in that position until 2006. In its donation appeals on television Deniz Feneri stressed that the funds donated would be used directly and exclusively for charitable purposes and for the funding of social projects.

8. In 2006 the Frankfurt am Main prosecution authorities (*Staatsanwaltschaft*) launched investigations against the applicant and several co-suspects, including G., on suspicion of having fraudulently used the majority of funds donated to the associations for commercial purposes and their own benefit.

9. On 11 March 2008 the preliminary criminal proceedings against the applicant were separated from the investigations against the co-suspects.

10. In the middle of 2008 criminal investigations based on the same allegations of fraud were also initiated against the applicant in Turkey.

B. The criminal proceedings against the co-suspects

11. By a judgment, the operative part of which together with a summary of its reasoning was pronounced orally on 17 September 2008 (file no. 5/26 Kls 6350 Js 203391/06 4/08), the Extended Economic Crimes Chamber (*Große Strafkammer als Wirtschaftsstrafkammer*) of the Frankfurt am Main Regional Court convicted two of the applicant's co-suspects, G. and T., of aggravated fraud (*Betrug in einem besonders schweren Fall*) acting as members of a joint criminal enterprise with its leaders in Turkey. Another co-accused, E., was convicted of having aided and abetted the commission of the offence. G. and T. were sentenced to prison sentences of five years and ten months and two years and nine months respectively, while E. was given a suspended prison sentence of one year and ten months. The full judgment, with the complete reasoning, was subsequently delivered in writing between 17 September and the beginning of November 2008.

12. The Regional Court found it to be established that G. had created and maintained a complex structure for the purpose of concealing the fact that the majority of the donations obtained for charitable purposes as advertised by Deniz Feneri were in reality earmarked and used to finance the entrepreneurial activities of private companies in which G. and the applicant, among others, became shareholders. At G.'s request, T. had contributed to the fraudulent misrepresentation by, *inter alia*, fabricating minutes of virtual association meetings of Deniz Feneri in order to conceal the unauthorised use of donated funds from the tax authorities. E., for his part, also acting upon instructions from G., had omitted to record the actual use of the donations in the association's official accounts and had documented them in separate unofficial accounts (*Nebenbuchhaltung*).

13. The court's findings were primarily based on confessions made by T., E. and G. following a plea bargain reached between the court, the prosecution authorities and the defence and also on further evidence obtained in the course of the trial. Whereas G. maintained that he alone had decided how the donated funds would be used without having consulted any contact persons in Turkey, T. and E. testified that G. had been integrated into the hierarchy of a criminal organisation whose leaders were in Turkey and in which the applicant had played a leading role. According to T. and E.'s testimony, G. had to obtain the applicant's prior approval with respect to all essential decisions relating to the use of donations obtained by the association. The court was therefore satisifed that G. had not been at the top of the criminal organisation's hierarchy but had received orders from its leaders residing in Turkey.

14. The judgment's reasoning is divided into six parts headed by Roman numerals. Part I provides information on the personal background of the accused. Part II contains a description of the circumstances of the case. Part III sets out the type of evidence on which the Regional Court based its

establishment of the facts and the court's assessment of the veracity and credibility of the relevant evidence. Parts IV and V contain the legal assessment of the offences committed by the accused and the determination of their relative guilt and the resulting sentence. Part VI stipulates that the accused are to bear the costs of the proceedings. The judgment refers on several occasions to the role that the heads of the criminal organisation in Turkey played in connection with the use of donated funds for non-charitable purposes. In that context the applicant's full first and last names are mentioned numerous times in the judgment running to some thirty-two pages. The most relevant passages of the judgment in parts II to V of its reasoning read as follows:

"**II.**

...

It was neither the association's chairman nor the registered members of the association [Deniz Feneri] who decided on the use of funds obtained on behalf of the association but the accused G. in coordination with and upon the instructions of the separately prosecuted (*gesondert Verfolgte*) Zekeriya Karaman, ..., ... and ..., ... (pp. 8 to 9)

...

The accused G. and the persons in charge of Kanal 7 in Turkey were ... aware that donations collected in the German association's [Deniz Feneri] name would only partly be used for charitable purposes or social projects. At any rate, since the year 2002 it had been the intention of G. and the separately prosecuted persons behind the scenes (*Hinterleute*) to also use a large part of the collected funds for economic activities, in particular for the start-up financing of entrepreneurial projects of private-law companies in which G. or the separately prosecuted Zekeriya Karaman, ..., ... and ... became shareholders. (pp. 9 to 10)

...

For this reason, the accused G. and the separately prosecuted Zekeriya Karaman instructed the co-accused E. to keep unofficial accounts (*Nebenbuchhaltung*). (p. 11)

...

Every month the contents of the unofficial accounts in Germany were coordinated between G. and ..., ... or Zekeriya Karaman. (p. 12)

...

According to the entries in the unofficial accounts a total amount of 4,504,000 euros was handed over to the separately prosecuted Zekeriya Karaman. (p. 15)

...

The separately prosecuted Zekeriya Karaman, ..., ..., ... and ... decided on the use of the funds collected by means of donations. In his capacity as director of the management board of Yeni Dunya Iletisim A.S., Zekeriya Karaman was accorded a pre-eminent role in this respect. (p. 15)

...

The accused T. was not aware of the exact amount of donated funds that had been used for non-charitable purposes. However he endorsed appeals for further donations while knowing that they were to a large extent going to be used for unauthorised purposes ... Following G.'s arrest in April 2007 he was the contact person of Zekeriya Karaman with respect to all matters related to Deniz Feneri in Germany. The latter provided him with a mobile phone and a prepaid card in view of suspected telephone surveillance. (p. 21)

...

III.

The circumstances of the case (*Sachverhalt*) have been established (*steht fest*) on the basis of the confessions made by the accused and further evidence obtained in the course of the trial as set out in the record of the hearing. (p. 22).

...

The Chamber did not follow G.'s submissions that he alone had decided on the unauthorised use of donated funds without consulting the persons behind the scenes in Turkey. The accused E. and the accused T. had stated in the course of their confessions during trial and during previous police questioning that G. had been integrated into a hierarchy and had to coordinate all essential decisions with the separately prosecuted Zekeriya Karaman, ... and ..., while Zekeriya Karaman, in his capacity as director of the management board of Yeni Dunya Iletisim A.S., played a pre-eminent role. (p. 23)

Such integration into a structure controlled from Turkey, as described by the two co-accused, is sufficiently proved by the implementation of an unofficial accounting system, a parallel structure to the television station and the association Deniz Feneri in Germany and Turkey for the collection of donations, the shareholding in the companies funded by donations, and the fact that cash withdrawals had been handed over at the premises of Kanal 7 in Turkey. By assuming sole responsibility for the donation appeals and the unauthorised use of the donated funds, the accused G. apparently tried to protect the persons behind him in Turkey from criminal prosecution in Germany and/or Turkey. (p. 23)

...

IV.

...

The accused T. is guilty of fraud committed in his capacity as successive joint offender (*in sukzessiver Mittäterschaft*) pursuant to Articles 263 and 25 § 2 of the German Criminal Code. Not only did T. want to support the actions of others but he also wanted to participate in a joint operation (*gemeinschaftliche Tätigkeit*) together with G. and the persons behind the scenes in Turkey. (p. 25)

...

V.

...

Furthermore, it had to be considered in [G.'s] favour that he was not positioned at the top of the hierarchy which organised the fraud (*Spitze der Organisation des Betrugs*) but received instructions from the persons behind the scenes in Turkey. He

could not decide alone on the unauthorised use of the donated funds but only develop ideas that ultimately had to be approved by the persons behind the scenes in Turkey. He was an executing organ rather than a decision maker (*mehr ausführendes als bestimmendes Organ*). (p. 28)

...

[T.'s] confession was not limited to his own participation in the commission of the offence. He also revealed his knowledge regarding the background and in particular concerning the persons behind the scenes. His knowledge was limited since G. and the persons behind him deliberately granted him only a restricted insight. In the hierarchy he was placed far below G. and the responsible persons in Turkey. (p. 29)

...

By keeping unofficial accounts [E.] made a significant contribution to the functioning of the overall system. The fact that he was not only requested by G. but also directly by the separately prosecuted Karaman to keep off the recorded accounts demonstrates the importance of such unofficial accounting. (p. 30)

...

The persons behind the scenes in Turkey had previously attempted to prevent [E.] from testifying before the investigative authorities by establishing contact with his first counsel and members of his family." (p. 31)

15. According to an article published by the German newspaper *Frankfurter Rundschau* on the Internet on 18 September 2008, the Acting President of the Frankfurt am Main Regional Court's Extended Economic Crimes Chamber had stated, when delivering the judgment, that the donated funds had been used by the persons behind the scenes for a mixture of their own economic and political purposes even though part of the money had indeed been spent on aid projects. The same newspaper had reported in an article published on the Internet on 15 September 2008 that the prosecution authorities (*Staatsanwaltschaft*) had referred to the applicant as the "main perpetrator and leader (*führender Kopf*) of the whole organisation". Similar quotations were published in several Turkish newspapers on 17 and 18 September 2008. For instance, according to an article published in the Turkish newspaper *Hürriyet* on 18 September 2008, the presiding judge had declared when delivering the judgment, that "*strings were pulled at the level of Kanal 7. G. and T. acted in accordance with instructions they had received from Kanal 7, in particular from Zekyria Karaman, ..., ... and ... The main persons in charge were located in Turkey.*"

16. The judgment was published on the Regional Court's website on 25 November 2008. In the judgment's Internet version the names of the accused and separately prosecuted were replaced by letters and the names of the companies involved by numbers. The introductory comments to the Internet publication included a paragraph stating that the judgment had become final and was binding only on the three convicted persons. It was specified that references and findings in the judgment with respect to the actions of other persons, in particular those separately prosecuted, were not

binding in relation to those persons and that the latter still benefited from the presumption of innocence. The text of the judgment itself does not contain a similar specification.

17. The judgment became final on 13 November 2008.

C. The applicant's constitutional complaint

18. By written submissions dated 16 December 2008 the applicant lodged a complaint with the Federal Constitutional Court. He argued that the references in the reasoning of the Regional Court's judgment of 17 September 2008 to his role in the fraudulent use of the donated funds had violated the principle of the presumption of innocence, which constituted one aspect of the constitutionally guaranteed right to a fair trial taken in conjunction with the principle of the rule of law.

19. By a decision of 3 September 2009, served on the applicant on 25 September 2009, the Federal Constitutional Court dismissed the complaint as inadmissible (file no. 2 BvR 2540/08).

20. The Constitutional Court found that while defendants were not categorically prevented from challenging a judgment delivered in proceedings conducted against third persons, an applicant who had not been party to the proceedings did have to be able to claim that his or her legitimate interests were directly affected by the impugned decision and not only in an indirect *de facto* manner. The Constitutional Court reiterated its established case-law according to which, by virtue of the constitutionally guaranteed principle of the presumption of innocence, no measures effectively amounting to a penalty could be taken against an accused without his guilt having been established beforehand in the course of a fair trial. Furthermore, that finding of guilt had to become final before it could be held against the person concerned. However, in the context of criminal proceedings the presumption of innocence did not prevent the law-enforcement authorities from making an assessment as to whether and to what degree a person could be suspected of having committed a criminal offence.

21. Turning to the circumstances of the case at hand, the Constitutional Court pointed out that the presumption of innocence did not protect the applicant *ab initio* from any factual impact of statements made in a judgment rendered in criminal proceedings against third persons with respect to his own involvement in the commission of the offence. That judgment did not constitute a decision that required the determination of the applicant's guilt or exposed him to disadvantages amounting to a conviction or sentence. Statements made in criminal proceedings against third persons did not have a binding effect on the courts or the prosecution authorities, whether with respect to preliminary proceedings pending against an applicant or in relation to any other court or administrative proceedings to

which an applicant might possibly become a party in the future. The applicant could not be regarded as guilty on the basis of that judgment and was still protected by the principle of the presumption of innocence. The fact that the establishment of the facts by the Regional Court not only concerned the accused, who were convicted at the end of the proceedings, but also the applicant was an inevitable consequence of the fact that in complex criminal proceedings it was hardly ever possible to conduct and terminate the proceedings against all the accused simultaneously.

D. Subsequent developments

22. A request for legal assistance was sent to the Turkish authorities on 20 January 2009 with a view to obtaining the applicant's examination in Turkey. No information was submitted to the Court as regards compliance with that request.

23. On 20 August 2009 the Frankfurt am Main prosecution authorities brought charges against the applicant and three co-accused in connection with the events in issue. It further appears that on 9 April 2012 the Ankara General Prosecutor's Office brought similar charges against the applicant and that his trial in Turkey commenced on 16 January 2013. According to the Government's submissions, the Frankfurt am Main Regional Court, by an order dated 19 August 2013, opened the main hearing in the proceedings against the applicant. These are apparently still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Criminal Procedure

24. Pursuant to Article 155 § 1 of the Code of Criminal Procedure, criminal investigations and related decisions concern only the accused and the charges brought against him or her. Article 264 § 1 stipulates that a judgment rendered in criminal proceedings shall deal with the offence set out in the bill of indictment as determined in more detail in the light of the outcome of the trial.

25. Article 250 states that where evidence in criminal proceedings derives from a person's perception of the events in issue, that person will be examined at the main hearing. The examination must not be replaced by reading out the record of a previous examination of such witness or by his or her written statement.

26. Pursuant to Article 337 of the Code of Criminal Procedure, an appeal on points of law (*Revision*) against the judgment of a criminal court may only be lodged on the ground that the judgment was based on a breach of law.

B. The Federal Constitutional Court Act

27. The relevant provisions of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) read as follows:

Section 90

(1) Any person who claims that one of his basic rights or one of his rights under Articles 20 (4), 33, 38, 101, 103 and 104 of the Basic Law has been violated by a public authority may lodge a constitutional complaint with the Federal Constitutional Court.

(2) If legal action against the violation is admissible, the constitutional complaint may not be lodged until all remedies have been exhausted. However, the Federal Constitutional Court may decide immediately on a constitutional complaint lodged before all remedies have been exhausted if it is of general relevance or if recourse to other courts first would entail a serious and unavoidable disadvantage for the complainant.

...

Section 93a

(1) A complaint of unconstitutionality shall require acceptance prior to a decision.

(2) It shall be accepted

(a) if it raises a constitutional issue of fundamental significance,

(b) if this is advisable for securing the rights referred to in section 90(1); or also in the event that the denial of a decision on the matter would entail a particularly serious disadvantage for the complainant."

C. The principle of presumption of innocence

28. According to the established case-law of the German Federal Constitutional Court (see, for instance, BVerfGE 74, 358, 370 et seq. and 82, 106, 114 et seq.), the principle of being presumed innocent until proved guilty according to law derives from the principle of the rule of law, and in interpreting its content and scope regard must be had to the European Convention on Human Rights and to the case-law of the European Court of Human Rights. The principle of the presumption of innocence is closely linked to the right of a person charged with a criminal offence to defend him or herself in the course of a fair trial. By virtue of that principle, no measures effectively amounting to a penalty may be taken against a defendant without his guilt having been established beforehand at a proper trial. The principle further requires that guilt be proved according to law before it can be held against the person concerned. A finding of guilt will accordingly not be legitimate for this purpose unless it is pronounced at the close of a trial which has reached the stage at which a verdict can be given.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

29. The applicant complained that the statements in the Regional Court's judgment of 17 September 2008 referring to his involvement in the offence allegedly committed jointly with the co-accused had disregarded the principle of the presumption of innocence enshrined in Article 6 § 2 of the Convention, which reads as follows:

> "...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> ..."

30. The Government contested that argument.

31. The Court notes at the outset that it was not disputed between the parties that the applicant was "charged with a criminal offence" within the meaning of Article 6 of the Convention.

32. The Government argued, however, that the application was inadmissible since the applicant could not claim to be a victim of a violation of the presumption of innocence and, moreover, had not exhausted domestic remedies in that respect. They contended, in the alternative, that there had been no breach of Article 6 § 2.

A. Admissibility

1. The alleged lack of the applicant's standing as a "victim"

(a) The Government

33. In the Government's view, the applicant could not claim to be a victim within the meaning of Article 34 of the Convention of a violation of the right to be presumed innocent.

34. The Government submitted in this connection that it followed from Article 155 § 1 read in conjunction with Article 264 § 1 of the Code of Criminal Procedure (see "Relevant domestic law and practice", above) that any decision or finding of guilt by the criminal courts concerned only the accused and the offences referred to in the bill of indictment relating to a particular trial. In the instant case the Regional Court's judgment had been rendered in separate proceedings against the applicant's co-accused and any finding of guilt was consequently limited to the latter, did not extend to the applicant, and could not be held against him.

35. The Government further argued that the Regional Court's judgment did not bind the courts or the prosecution authorities as regards criminal

proceedings pending or to be instituted against the applicant in the future. The principle of the presumption of innocence precluded any prejudgment of the applicant's guilt by the trial court conducting the proceedings against him and under no circumstances could a possible future conviction be based on the impugned statements in the judgment previously rendered against his co-accused. On the contrary, the trial court would be under an obligation to impartially assess all available evidence submitted by the prosecution authorities in the applicant's own proceedings. Hence, the impugned passages of the Regional Court's judgment, which were of no legal relevance for the applicant's subsequent trial, only affected him in an indirect *de facto* manner as a result, for instance, of the media coverage of the proceedings.

36. The Government, fully concurring with the Federal Constitutional Court's findings in its decision of 3 September 2009 (see paragraph 20 et seq., above), contended that the presumption of innocence did not protect the applicant from the merely factual and indirect impact of a judgment rendered in criminal proceedings against third parties which did not contain a determination of the applicant's own guilt or expose him to disadvantages amounting to a conviction or sentence.

(b) The applicant

37. The applicant disputed the Government's submissions and maintained that the narrow interpretation of the principle of the presumption of innocence by the Government and Federal Constitutional Court was not in line with the Court's case-law establishing that the scope of application of Article 6 § 2 was not limited to situations where a person's guilt had been determined by means of a formal judicial decision (he cited *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62; *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; and *Borovský v. Slovakia*, no. 24528/02, § 45 et seq., 2 June 2009).

38. In the applicant's view, statements contained in a judgment against third parties regarding a separately prosecuted suspect that went beyond a necessary description of the facts and implied a *de facto* assessment of the latter's guilt could infringe the rule on the presumption of innocence. While it was true that the statements and findings in the Regional Court's judgment were not legally binding on the prosecution authorities and trial court involved in the pending or future (preliminary) criminal proceedings against the applicant, they had nevertheless created a factual precedent that could have a significant negative impact on such proceedings and had furthermore led the public to perceive the applicant as the head of a criminal organisation established for fraudulent purposes.

39. The applicant concluded that, contrary to the Government's submissions and the Federal Constitutional Court's finding in its decision of 3 September 2009, the incriminating references in the Regional Court's

judgment had directly affected his right to be presumed innocent and that he could consequently claim to be a victim of a violation of Article 6 § 2 of the Convention.

(c) The Court's assessment

40. The present case concerns the question whether the principle of the presumption of innocence may be infringed by statements contained in a judgment directed against co-suspects in separate proceedings that do not have a legally binding effect in pending or future (preliminary) criminal proceedings against the applicant. The Court's task is to determine whether the situation established in this case affected the applicant's right under Article 6 § 2 of the Convention.

41. The Court notes, firstly, that neither the wording of Article 6 § 2 nor the preparatory works on the provision provide clarification in this respect. Turning to its related case-law, the Court reiterates that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of a fair criminal trial required by Article 6 § 1 (see, among others, *Daktaras v. Lithuania*, n° 42095/98, § 41, ECHR 2000-X; *Janosevic v. Sweden*, n° 34619/97, § 96, ECHR 2002-VII; and *Yassar Hussain v. the United Kingdom*, n° 8866/04, § 19, ECHR 2006-III). In its recent judgment of *Allen v. the United Kingdom* ([GC], no. 25424/09, ECHR 2013), the Grand Chamber reiterated that, viewed as a procedural guarantee in the context of a criminal trial, "the presumption of innocence imposes requirements in respect of, *inter alia*, ... premature expressions by the trial court or by other public officials of a defendant's guilt" (see *Allen*, cited above, § 93). The Court has previously held in this context that Article 6 § 2 aims at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with the proceedings. It not only prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law, but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty (see, among other authorities, *Minelli*, cited above, § 37; *Allenet de Ribemont*, cited above, § 35; *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II (extracts); *Lavents v. Latvia*, no. 58442/00, § 125 et seq., 28 November 2002; and *Borovský*, cited above, §§ 45 et seq., 2 June 2009). The Court has held in this context that there may be a breach of the principle of the presumption of innocence on account of prejudicial comments relating to a suspect's involvement in the commission of an offence made by public officials at a time when judicial investigations were pending against the suspect but before he had been formally charged with

the offence in issue (see *Allenet de Ribemont,* cited above). The Court has further specified that Article 6 § 2 may apply where a court decision rendered in proceedings that had not been directed against the applicant in his capacity as "accused" but nevertheless concerned and had a link with criminal proceedings simultaneously pending against him, implied a premature assessment of his guilt (see *Böhmer v. Germany*, no. 37568/97, § 67, 3 October 2002, and *Diamantides v. Greece (no. 2)*, no. 71563/01, § 35, 19 May 2005).

42. The Court considers, contrary to the Government's submissions, that the principle of the presumption of innocence may in theory also be infringed on account of premature expressions of a suspect's guilt made within the scope of a judgment against separately prosecuted co-suspects, as alleged by the applicant in the instant case. It reiterates in this context that the object and purpose of the Convention, as an instrument for the protection of human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective. The Court has expressly stated that this also applies to the right enshrined in Article 6 § 2 (see, for example, *Allenet de Ribemont*, cited above, § 35; *Lavents*, cited above, § 126; and *Allen*, cited above, § 92).

43. The Court notes in this connection that at the time of delivery of the Frankfurt am Main Regional Court's judgment against the applicant's co-suspects, preliminary criminal proceedings had been instituted against the applicant on allegations of fraud in Germany and Turkey and that he had thus been "charged with a criminal offence" within the meaning of Article 6 § 2, although he had not yet been formally indicted (see *Eckle v. Germany*, 15 July 1982, § 73, Series A no. 51, and *Šubinski v. Slovenia*, no. 19611/04, § 62, 18 January 2007). The relevant passages in the judgment concerned his involvement in the fraudulent use of the donated funds that was also the subject of the parallel criminal investigations instituted against him and consequently had a direct link with those proceedings. The Court finds that such statements, notwithstanding the fact that they are not binding with respect to the applicant, may have a prejudicial effect on the proceedings pending against him in the same way as a premature expression of a suspect's guilt made by any other public authority in close connection with pending criminal proceedings (compare *Diamantides*, cited above, § 44). The Court considers it relevant to note in this context that in a situation like the one underlying the instant application, an accused being prosecuted separately, who is thus not a party to the proceedings against his co-accused, is indeed deprived of any possibility of contesting allegations made during those proceedings that he was involved in the crime.

44. In keeping with the need to ensure that the right guaranteed by Article 6 § 2 is practical and effective, the Court therefore concludes that the presumption of innocence applies in the present case and that the applicant

may claim to be a victim of a possible infringement of his right to be presumed innocent.

2. The alleged lack of exhaustion of domestic remedies

(a) The Government

45. The Government further submitted that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

46. In their opinion, the applicant ought to have awaited the outcome of his own trial and could then have appealed against a possible conviction on the ground that the trial court had not independently assessed the available evidence against him. They argued that only upon termination of criminal proceedings ending in a conviction could it be established whether the trial court's reasoning suggested that it had regarded the applicant as guilty in advance, in breach of the principle of the presumption of innocence.

47. The Government further maintained that in so far as the applicant complained about the media attention that the Regional Court's judgment had attracted in particular in Turkey, and even assuming that protection from public attention formed part of the principle of the presumption of innocence, he could have been expected to exhaust the appropriate civil-law remedies in that respect. In any event, the Government could not be held responsible for statements made in the Turkish media.

(b) The applicant

48. The applicant considered that by raising his complaint that the impugned statements in the Regional Court's judgment had infringed his right to be presumed innocent before the Federal Constitutional Court, he had exhausted the available domestic remedies.

49. He further explained that his complaint mainly concerned a violation of the principle of the presumption of innocence on account of the said statements in the judgment against his co-suspects and that, in his view, the judgment's subsequent media coverage was not material to a possible finding of a violation of Article 6 § 2. He consequently objected to the Government's submission that he should have challenged the prejudicial media coverage of the Regional Court's judgment before the civil courts.

(c) The Court's assessment

50. The Court notes that the applicant lodged a complaint against the Frankfurt am Main Regional Court's judgment with the Federal Constitutional Court alleging a violation of his right to be presumed innocent, which was the same complaint as that subsequently raised before this Court. It notes that there is nothing to establish – and the Government have not contended – that the applicant had at his disposal any other

domestic remedy by which to directly complain of a violation of his constitutional rights as a result of a judgment delivered against third parties. The Court would, moreover, point out that in its decision of 3 September 2009 the Federal Constitutional Court itself did not dismiss the applicant's complaint for lack of exhaustion of domestic remedies but on the ground that in its opinion the impugned decision did not directly affect the applicant's legitimate interests. The Court is therefore satisfied that the applicant has afforded the domestic courts an opportunity of preventing or putting right the alleged violation of his Convention right before submitting that allegation to it, in line with the purpose of Article 35 § 1 of the Convention (see, among other authorities, *Slimani v. France*, no. 57671/00, § 38, ECHR 2004-IX (extracts), and *ASBL Church of Scientology v. Belgium* (dec.), no. 43075/08, § 26, 27 August 2013).

51. In view of its finding that the principle of the presumption of innocence may be infringed even in the absence of a formal finding of a defendant's guilt (see paragraphs 40-44 above), the Court rejects the Government's argument that the applicant ought to have awaited the outcome of the criminal proceedings pending against him before alleging a possible violation of his right to be presumed innocent. The Court finds that while that objection may be valid where an applicant complains of a violation of the procedural guarantees enshrined in Article 6 §§ 1 and 3 in the context of a criminal trial itself and where it would be the Court's task to evaluate the fairness of the criminal proceedings taken as a whole (see, for instance, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010), an applicant is not precluded from alleging a violation of his right to be presumed innocent prior to the conclusion of the proceedings pending against him.

52. Nor does the Court share the Government's view that the applicant should have had recourse to the remedies available under civil law as far as the media coverage of the Regional Court's judgment was concerned. The Court notes that the subject of such civil proceedings would have been different from that of the present application, as submitted by the applicant (see above paragraph 49), namely, whether or not the relevant passages in the Regional Court's judgment had violated the applicant's right to be presumed innocent. They would thus not have constituted an effective remedy in this regard (see *Shuvalov v. Estonia*, no. 39820/08 and 14942/09, § 73, 29 May 2012).

53. The Court is therefore satisfied that the applicant exhausted domestic remedies as required by Article 35 § 1 of the Convention.

3. Conclusion

54. Having regard to the above considerations, the Court dismisses the Government's objections of inadmissibility. Neither does the Court find the complaint manifestly ill-founded within the meaning of Article 35 § 3 (a) of

the Convention or inadmissible on any other grounds. It accordingly declares the application admissible.

B. Merits

1. The parties' submissions

(a) The applicant

55. In the applicant's submission, the incriminating statements in the Frankfurt am Main Regional Court's judgment rendered against his separately prosecuted co-suspects clearly suggested that the court considered him guilty of the alleged crime. He had been described as playing a leading role in the organisation of the offence without having been granted an opportunity to comment on the accusations against him. The judgment had not only set a factual precedent as regards the further course of the proceedings against him in Germany and Turkey but had also led the public to perceive him as the head of a criminal organisation established for fraudulent purposes.

56. The applicant conceded that references in judgments of the criminal courts to the participation of separately prosecuted co-suspects were necessary with a view to establishing the circumstances of a case involving several suspects and in order to determine their individual contribution to the commission of an offence. He contended that any such references should, however, remain limited to describing a state of suspicion with respect to the involvement of separately prosecuted suspects and not amount to a finding of their guilt.

57. In his view, the Regional Court's judgment had not only contained a determination of the accused's guilt but also contained statements about the applicant's criminal responsibility that went beyond a mere description of a state of suspicion. The judgment's reasoning was not confined to a neutral description of the applicant's alleged participation in the offence but made reference to his motivation, intent and other subjective elements underlying his involvement in the events in issue. Furthermore, the Regional Court had used legal terms and expressions that clearly implied that the applicant's involvement qualified as fraud under the criminal law, committed jointly with the accused.

58. The impugned statements in the judgment's reasoning taken as a whole were thus tantamount to a finding of the applicant's guilt that infringed his right to be presumed innocent.

(b) The Government

59. The Government argued that since there existed a factual connection between the accusations against the applicant's co-suspects and his own role in the events underlying their conviction, references to his participation in

the crime had been indispensable with a view to assessing the contribution of each co-accused to the commission of the offence and, consequently, in order to determine their respective guilt and corresponding sentence. This was the usual approach applied by the criminal courts in complex proceedings involving several suspects in which it was hardly ever possible to conduct and terminate the proceedings against all the accused simultaneously. For instance, when determining the guilt of suspects charged in separate proceedings with having instigated or aided and abetted a crime (*Anstifter oder Gehilfen*) the trial court was obliged to establish that the crime itself had actually been committed; a mere assumption was not sufficient in this regard. That approach further complied with the principle enshrined in the rule of law that criminal proceedings had to be conducted expeditiously, in particular where they involved an accused's pre-trial detention, as had been the case with respect to the applicant's co-suspects in the present case.

60. The Government further maintained that the references to the applicant in the Regional Court's judgment mainly concerned the position the applicant had held within the various enterprises and associations involved in the organisation and concealment of the crime at issue. They emphasised that any such references were limited to a neutral description of the facts and made no link to his criminal responsibility. At no point did the reasoning of the Frankfurt am Main Regional Court create the impression that the applicant, who, throughout the judgment, was referred to as "separately prosecuted", was presumed guilty of having committed a particular crime.

61. This was all the more evident when regard was had to the fact that the proceedings before the Regional Court had not been directed against the applicant and had thus not required the determination of his criminal responsibility. The Regional Court's judgment did not have any binding effect on the criminal proceedings pending against the applicant or any other future proceedings to which he might become a party and consequently did not have a prejudicial effect in this regard. Any finding of guilt in respect of the applicant was reserved for his own trial, when he would also have the opportunity to contest the facts underlying the Regional Court's prior judgment against his co-suspects. For this reason, it had also not been necessary to hear the applicant in the proceedings against the co-suspects.

62. The Government submitted, lastly, that by specifying in the introductory comments to the judgment's Internet publication on 25 November 2008 that any references and findings with respect to separately prosecuted co-suspects were not binding and that the latter still benefited from the presumption of innocence, the national authorities had ensured that the applicant could not be prematurely perceived as guilty by the public.

2. The Court's assessment

63. With reference to its interpretation of the scope of application of Article 6 § 2 as set out above in paragraphs 40-44, the Court reiterates that the principle of the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he or she is guilty before that person has been proved guilty according to law. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. In this connection the Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Daktaras*, cited above, § 41; *Böhmer*, cited above, §§ 54 and 56; *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007; *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008; and *Borovský*, cited above, §§ 45 et seq.). While the use of language is of critical importance in this respect, the Court has further pointed out that whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above, § 43; *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 44, 28 October 2004; *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005; and *Allen*, cited above, §§ 125 and 126). Even the use of some unfortunate language may not be decisive when regard is had to the nature and context of the particular proceedings (see *Allen*, cited above, § 126).

64. The Court accepts the Government's argument that in complex criminal proceedings involving several persons who cannot be tried together, references by the trial court to the participation of third persons, who may later be tried separately, may be indispensable for the assessment of the guilt of those who are on trial. Criminal courts are bound to establish the facts of the case relevant for the assessment of the legal responsibility of the accused as accurately and precisely as possible, and they cannot present established facts as mere allegations or suspicions. This also applies to facts related to the involvement of third persons. However, if such facts have to be introduced, the court should avoid giving more information than necessary for the assessment of the legal responsibility of those persons who are accused in the trial before it.

65. Turning to the circumstances of the present case, the Court first notes that the provisions of German law clearly state that no inferences about the guilt of a person can be drawn from criminal proceedings in which he or she has not participated. The impugned statements in the judgment of the Frankfurt am Main Regional Court must be read in that context (see, *mutatis mutandis*, *Allen*, cited above, § 125). Nevertheless, the Court also

has to examine whether the criminal court's reasoning in the present case was worded in such a way as to give rise to doubts as to a potential pre-judgment about the applicant's guilt, and thus to jeopardise the fair examination of the charges brought against him in the separate proceedings in Germany and/or in Turkey.

66. In the present case the Frankfurt am Main Regional Court had to assess, among other things, the extent to which G. had, as he claimed himself, decided alone on the use of the donated funds without having consulted any contact persons in Turkey, or, as stated by the witnesses and co-accused, how far G. had been integrated into a criminal organisation's hierarchy which had its leaders in Turkey. In order to decide that question the court had to establish who had made the plans to misuse the donations and, on this basis, who had given which instructions to whom. The Court acknowledges that in this context the court inevitably had to mention the concrete role played, and even the intentions harboured, by all the persons behind the scenes in Turkey, including the applicant.

67. The Court will also examine whether the criminal court made it sufficiently clear that it was not also implicitly determining the applicant's guilt.

68. Concerning the statement of the presiding judge orally delivering the decision of the court on 17 September 2008, the Court stresses that it has not been provided with the explicit wording of that statement. The applicant only referred to a report in a newspaper article published on the Internet on 18 September 2008. He himself expressed the view that the judgment's subsequent media coverage was not material to a possible finding of a violation of Article 6 § 2 (see paragraph 49 above). On the basis of the material in its possession, the Court cannot therefore find that the presiding judge made statements that violated the presumption of the applicant's innocence. In any event, these statements were superseded by the written version of the judgment, which was delivered some time later.

69. It is true that the court used the full name of the applicant in the written version of the judgment sent to the accused, while it used initials in the version of the judgment published on the Internet on 25 November 2008. The Court does not consider, however, that the use of initials in the official version was necessary in order to avoid any wrong conclusions. It is more important to note that, by referring to the applicant throughout the judgment as "separately prosecuted", the court underlined the fact that it was not called upon to determine the applicant's guilt but, in line with the provisions of domestic law on criminal procedure, was only concerned with assessing the criminal responsibility of those accused within the scope of the proceedings in issue. The legal assessment in part III of the judgment alludes to the "persons behind the scenes" and does not contain any statement that might be understood as an assessment of the applicant's guilt.

70. The Court observes, lastly, that in the introductory comments to the judgment's Internet publication as well as in the Federal Constitutional Court's decision of 3 September 2009 dismissing the applicant's constitutional complaint, it was emphasised that it would be contrary to the principle of the presumption of innocence to attribute any guilt to the applicant and that an assessment of his possible involvement in the crime had to be left to the main proceedings to be conducted against him. The Court is thus satisfied that the courts avoided, as far as possible – in the context of a judgment involving several co-suspects not all of whom were present – giving the impression that they were prejudging the applicant's guilt. There is nothing in the judgment of the Frankfurt am Main Regional Court that makes it impossible for the applicant to have a fair trial in the cases in which he is involved.

71. In view of the above considerations, the Court concludes that the impugned statements in the reasoning of the Frankfurt am Main Regional Court's judgment of 17 September 2008 did not breach the principle of the presumption of innocence. There has accordingly been no violation of Article 6 § 2.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 6 § 2 of the Convention.

Done in English, and notified in writing on 27 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

M.V.
C.W.

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Villiger and Yudkivska is annexed to this judgment.

JOINT DISSENTING OPINION OF JUDGES VILLIGER AND YUDKIVSKA

We regret that we cannot follow the conclusion of the majority. Rather, we find that the impugned statements in the reasoning of the Frankfurt am Main Regional Court's judgment of 17 September 2008 did indeed violate the applicant's right to be presumed innocent.

We acknowledge, like the majority, that in complex criminal proceedings involving several suspects who cannot be tried together, references to the participation of separately prosecuted co-suspects by the trial court may be indispensable for assessing an accused's guilt. The applicant himself conceded that such references were necessary with a view to establishing the circumstances of a case involving several accused and in order to determine their individual contribution to the commission of an offence.

We further accept that in the proceedings at issue the Frankfurt am Main Regional Court was not called upon to determine the applicant's guilt and that its jurisdiction, in line with the provisions of domestic law on criminal procedure, was limited to assessing the criminal responsibility of those accused within the particular trial conducted by it.

However, in our view these considerations are not sufficient to conclude that the impugned references to the applicant's contribution in the investigated crime did not breach the principle of the presumption of innocence, one of the fundamental principles enshrined in the Convention.

In this context we would refer to the Court's case-law according to which, in determining whether a judicial decision or a statement by a public official amounts to a prejudgment of a person's guilt, a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. While the choice of words by public officials is of critical importance in this respect (see, among other references, *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X), the Court has emphasised in its recent judgment in the case of *Allen v. the United Kingdom* ([GC], no. 25424/09, ECHR 2013) that even the use of some unfortunate language may not be decisive when regard is had to the nature and context of the particular proceedings (ibid., § 126).

The presumption of innocence implies that a moral and legal qualification of an accused's acts may only be given by a court and only within the scope of adversarial judicial proceedings. In the present case, however, the court gave an assessment and legal qualification of the applicant's actions in the separate proceedings against his co-accused. Contrary to the majority, we consider that the references to the applicant's participation in the organised crime and the language employed by the

Regional Court in this respect, even when considered in the context of the particular proceedings, amounted to a prejudgment of the applicant's guilt.

Not only does the Regional Court's judgment cite the applicant's full first and last names on numerous occasions, it also clearly follows from these references read in conjunction with the passages describing the contribution of the further perpetrators abroad that "the persons behind the scenes" in Turkey pulled the strings in the criminal enterprise and that the applicant played "a preeminent role" in this respect.

Thus the Regional Court established the *actus reus* of the applicant's actions in the course of the separate proceedings against his co-accused, whilst the sole task of the court in such proceedings was to establish whether the co-accused had committed a crime. It is true that these issues are connected and interdependent to some extent, and cross-reference is inevitable as mentioned above. However, in order to establish the proven limits of the co-accused's actions the court was not obliged to determine with precision the role of the applicant; reference to an *alleged* role of the separately prosecuted person would have been sufficient.

We would emphasise in this respect that the Regional Court stated in the judgment that the circumstances of the case (*Sachverhalt*), including the applicant's role, "ha[d] been established" (*steht fest*) on the basis of the available means of evidence (see p. 22 of the Regional Court's judgment). There can be no clearer statement!

In view of these considerations, we find that the relevant passages in the judgment's reasoning were not limited to the description of a mere "state of suspicion" against the applicant and consequently went beyond what was necessary for establishing the accused's guilt. They implied, by contrast, that the Regional Court had found it established that the applicant had been one of the main perpetrators involved in the joint criminal enterprise, thus prejudging the outcome of future criminal proceedings against him. The statements taken as a whole could not but have encouraged the public to perceive the applicant as the head of a criminal organisation established for fraudulent purposes – and all this despite the fact that the applicant was not a party to the criminal proceedings.

In our view, the qualification of the applicant's status in the judgment's reasoning as "separately prosecuted" does not constitute a sufficient reservation in this respect, and nor could the introductory comments to the judgment's subsequent Internet publication reverse the prejudicial effect of the judgment's reasoning.

We therefore conclude that the relevant passages of the Frankfurt am Main Regional Court's judgment taken together and viewed as a whole ran contrary to the applicant's right to be presumed innocent and that there has accordingly been a violation of Article 6 § 2 of the Convention.