CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF BÖKE AND KANDEMİR v. TURKEY

(Applications nos. 71912/01, 26968/02 and 36397/03)

JUDGMENT

This version was rectified on 18 August 2009
under Rule 81 of the Rules of Court

STRASBOURG

10 March 2009

FINAL

10/06/2009

This judgment may be subject to editorial revision.

In the case of Böke and Kandemir 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,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in three applications (nos. 71912/01 and 26968/02 and 36397/03) 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 two Turkish nationals, Mr Rifat[1] Böke and Mr Halil Kandemir ("the applicants"), on 15 June 2001, 7 May 2002 and 28 October 2003 respectively.

2. The applicants were represented by Mr M.N. Terzi, a lawyer practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

3. On 23 September 2005 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the case at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1969 and 1979 respectively and live in İzmir.

1. The name of Rıfat Böke has been changed to Rifat Böke.

A. The arrest and detention of the applicants

5. On 14 February 2001 two persons were shot and injured in a bus by a person who subsequently got off the bus.

6. On the same day, upon receipt of information that the suspect of the shooting was in a red car, police officers from the Aydın police headquarters arrested the applicants during a traffic control operation that had they initiated on the Aydın motorway. The security forces further arrested four other persons, including the first applicant's brother, in another car. The police officers confiscated the applicants' mobile telephones and both cars, in which 5 firearms were found. On the same day, the applicants were taken into police custody.

7. On 15 February 2001 three police officers drafted a report containing the numbers dialled and calls received on the mobile telephones of the first applicant, his brother and another suspect.

8. On 19 February 2001 a single judge at the Aydın Magistrates' Court extended the period of the applicants' detention in police custody for a further three days.

9. On the same day the applicants' statements were taken by police officers from the organised crime unit of the Aydın Police Headquarters. According to the document containing their statements, the applicants were suspected of forming a criminal profit-making organisation proscribed by Article 1 of Law no. 4422. According to the document, both applicants confessed to their involvement in a criminal organisation.

10. On 15, 16 and 21 February 2001, the applicants were examined by doctors at the Aydın State Hospital. The doctors noted in their reports that there were no signs of ill-treatment on the applicants' persons.

11. On 21 February 2001 the applicants were brought before a single judge at the Aydın Magistrates' Court, who ordered their detention on remand. Before the judge, the applicants refuted the accuracy of the documents containing their statements taken by the police.

12. On 22 March 2001 the firearms found in the cars were subjected to a ballistic examination. The experts found that one of the weapons found in the car of the first applicant's brother had been used in the shooting of 14 February 2001.

13. On an unspecified date a test was conducted in order to detect traces of gunpowder on the applicants' and other suspects' hands, which resulted in the finding of gunpowder traces on the applicants' hands.

B. Criminal proceedings before the İzmir State Security Court

14. On 19 April 2001 the Public Prosecutor at the İzmir State Security Court filed a bill of indictment, charging the applicants and eleven other persons with forming a criminal profit-making organisation.

15. On 5 June 2001 the applicants made statements before the Aydın Assize Court and refuted the veracity of the documents containing their statements taken by the police. The minutes containing their statements were then sent to the İzmir State Security Court.

16. On 13 June 2001 the İzmir State Security Court held the first hearing on the merits of the case and heard some of the accused and read out the evidence in the case file. On the same day the applicants' representative stated before the court that the applicants disputed the accuracy of the evidence against them, including the medical reports issued following their detention in police custody, which stated that there was no sign of physical violence on their bodies.

17. On 2 August and 11 September 2001 the court held the second and third hearings and took statements from some of the other accused.

18. On 13 June 2001, 26 July 2001, 2 August 2001 and 11 September 2001, the State Security Court refused to release the applicants, relying on the seriousness of the offence and the evidence in the case file.

19. On 1 November 2001, during the fourth hearing before the State Security Court, the first applicant, Rifat[1] Böke, complained that he had been subjected to torture during his detention in police custody and that he suffered from cervical disk syndrome as a result. He denounced the statements that had been taken from him in police custody and contested the accuracy of the medical reports issued in his respect. At the end of the hearing, the court refused to release the applicants, taking into account the nature of the offence and state of the evidence. The court held that the next hearing would be held on 27 December 2001.

20. The applicants filed an objection to the decision for their continued detention.

21. On 20 November 2001 another Chamber of the İzmir State Security Court dismissed the applicants' objection, holding that the decision for their continued detention was justified.

22. Between 27 December 2001 and 14 May 2002 the İzmir State Security Court held four more hearings.

23. On 14 May 2002 the İzmir State Security Court convicted the applicants of forming a profit-making criminal gang and sentenced them to three years and four months' imprisonment. In its judgment, the court took into consideration as evidence the arrest report, the report stating that firearms were found in the applicants' car, the applicants' statements to the police, the medical reports issued at the end of their detention in police custody, the report containing the details of the telephone calls made by the first applicant, the results of the test showing gunpowder traces on the applicants' hands and the ballistic reports. The court further noted the past relations between the applicants and the other accused, as well as the

1. The name of Rıfat Böke has been changed to Rifat Böke.

hostility between them and one of the persons who had been shot on 14 February 2001. In the light of the evidence in the case file, the State Security Court found it established that the applicants had formed a criminal organisation with a view to making a profit, and that the shooting of the two persons on 14 February 2001 had been a result of the activities of that organisation. Taking into account the total period of the applicants' pre-trial detention, the court ordered their release.

24. On 5 May 2003 the Court of Cassation upheld the decision of the İzmir State Security Court.

C. Criminal proceedings before the Aydın Criminal Court

25. On 14 June 2001 the Aydın Public Prosecutor filed a bill of indictment with the Aydın Criminal Court, charging the applicants with causing grievously bodily harm to third persons.

26. On 4 December 2006 the Aydın Criminal Court acquitted the applicants. The court noted that the persons who had been shot could not identify the applicants as the perpetrators of the shooting. It held that there was insufficient evidence in the case file to conclude that the applicants had been involved in the shooting.

D. The first applicant's allegations of ill-treatment and the related proceedings

27. On 26 February 2001 the applicant met his representative in the Aydın prison. The applicant complained about the ill-treatment he had allegedly suffered in police custody. He asked his representative to secure him a medical examination.

28. On 2 March 2001 the applicant's representative filed a petition with the İzmir Public Prosecutor's office, requesting the latter to order the medical examination of both applicants. He alleged that, during the applicants' detention in police custody, they had been subjected to various forms of ill-treatment, including hanging by the arms, which still caused them pain and had left marks on their bodies. He further stated that the applicants had previously been examined by doctors who had turned a blind eye to these marks and had failed to draft accurate medical reports. He warned that an immediate medical examination was necessary since the traces of ill-treatment risked disappearing.

29. On the same day, the Aydın Public Prosecutor sent a letter to the Aydın Prison Administration, requesting the latter to send the applicants to Aydın State Hospital for medical examinations. He further asked the prison administration to provide him with the medical reports concerning the findings on the applicants' bodies so that he could verify whether they had been subjected to ill-treatment.

30. On 29 March 2001 the first applicant was taken to a clinic attached to the Aydın Governor's office. A doctor examined the applicant and drafted a report in which he noted that there was no sign of ill-treatment. He recommended that the applicant undergo a medical examination by a neurologist.

31. On 30 March 2001 a doctor at the Aydın State Hospital drafted a report on the first applicant's neurological examination. He noted that there were no pathological findings in respect of the applicant.

32. According to the first applicant's submissions, on the same day, another doctor at the hospital took an x-ray of his neck. The applicant further submitted that the doctor had noted in his report that he was suffering from cervical disk syndrome. The doctor sent the applicant's x-ray to the Aydın prison.

33. On 4 April 2001 a doctor at the Aydın State Hospital prescribed a hard cervical collar for the first applicant. According to the minutes of the hearing before the Aydın Criminal Court held on 26 July 2001, the applicant appeared before the court wearing the collar.

34. On 10 May 2001 the applicant filed a complaint with the Aydın Public Prosecutor's office against the police officers who had allegedly ill-treated him, and the prison authorities, who had failed to arrange his transportation to a hospital for medical examination. He also complained about the doctors who had not examined him in accordance with the regulations and had failed to note his injuries in their reports.

35. On 23 May 2001 a doctor prescribed anti-inflammatory medicine (Tilcotil) for the applicant.

36. On 5 June 2001 the applicant stated before the Aydın Assize Court, within the context of his defence concerning the case brought against him before the İzmir State Security Court (see paragraph 14 above), that he had been subjected to torture and had suffered from severe pain in his neck as a result. He further maintained that he could not receive appropriate medical treatment since he was detained.

37. On 23 October 2001 the Aydın Public Prosecutor issued a decision to discontinue the criminal proceedings against the police officers since no sign of ill-treatment had been detected on the applicant's person. In his decision, the public prosecutor relied exclusively on the medical reports issued in respect of the applicant on 15, 16 and 21 February 2001 and the medical report issued during the investigation.

38. On 9 January 2002 Mr Böke filed an objection with the Nazilli Assize Court against this decision. He maintained that he had worn a cervical collar for three weeks. He further contended that the cervical X-ray, the medical report diagnosing him with cervical disk syndrome and the prescriptions had not been given to him. Nor had they been included in the investigation file.

39. On 5 February 2002 the Nazilli Assize Court dismissed the applicant's objection. The court considered that the decision to discontinue the proceedings was justified given the lack of sufficient evidence capable of substantiating the applicant's allegations of ill-treatment.

II. RELEVANT LAW AND PRACTICE

40. A full description of the law and practice at the relevant time may be found in *Batı and Others v. Turkey* (nos. 33097/06 and 57834/00, §§ 95-99, ECHR 2004-IV (extracts)) and in *Salduz v. Turkey* ([GC], no. 36391/02, §§ 27-31 and 37-44, 27 November 2008).

THE LAW

I. JOINDER

41. In view of the similarity of the applications, the Court deems it appropriate to join them.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF RIFAT BÖKE

42. In application no. 26968/02, the first applicant, Rifat[1] Böke, complained that he had been subjected to torture during his detention in police custody in breach of Article 3 of the Convention. He further complained under Articles 6 and 13 of the Convention that the domestic authorities had failed to conduct an effective investigation into his allegations.

The Court finds it appropriate to examine these complaints under Article 3 of the Convention alone. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The name of Rıfat Böke has been changed to Rifat Böke.

A. Admissibility

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

B. Merits

1. The responsibility of the respondent State in the light of the substantive aspect of Article 3 of the Convention

44. The applicant submitted that he had been subjected to torture in police custody. In particular, he was subjected to "Palestinian hanging" and his head and neck had been pulled back, which resulted in the cervical disc syndrome from which he suffered. The applicant further submitted that prior to his detention in police custody he had not suffered from this illness, and the fact that he had been prescribed a cervical collar and anti-inflammatory medicine was proof of the accuracy of his allegations. He alleged that the medical reports according to which there were no signs of physical violence on his person had not reflected the truth. The applicant finally submitted that the Government had failed to submit his hospital records and x-rays, although requested to do so by the Court.

45. The Government contended that there had been no evidence demonstrating that the cervical disc syndrome from which the applicant allegedly suffered occurred during his detention in police custody.

46. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrıkulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many others, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV; *Süleyman Erkan v. Turkey*, no. 26803/02, § 31, 31 January 2008).

47. In the present case, the Court notes at the outset that the first applicant consistently maintained his allegations of ill-treatment, in detail, not only when he complained to the national authorities but also in his submissions to the Court. However, neither of the medical reports, issued in his respect and submitted to the Court, indicate that the applicant had signs of ill-treatment on his person.

48. Nevertheless, the Court cannot but note that the medical reports submitted to the Court lack detail and fall significantly short of both the standards recommended by the European Committee for the Prevention of

Torture and Inhuman or Degrading Treatment or Punishment (CPT), which are regularly taken into account by the Court in its examination of cases concerning ill-treatment (see, *inter alia*, *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X), and the guidelines set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "the Istanbul Protocol", submitted to the United Nations High Commissioner for Human Rights (see *Batı and Others,* cited above, § 100). As such, the Court considers that the medical reports in question cannot be relied on as evidence for proving or disproving that the applicant was ill-treated (see *Mehmet Eren v. Turkey*, no. 32347/02, §§ 40-42, 14 October 2008, and *Gülbahar and Others v. Turkey*, no. 5264/03, § 53, 21 October 2008)[1].

49. The Court further considers that no weight can be attached to the other documents submitted to the Court by the first applicant, namely the prescriptions for anti-inflammatory medicine and the cervical collar, as evidence of ill-treatment since they are not supported by any medical opinion linking the prescriptions to the alleged ill-treatment. The Court also observes, in this connection, that the Government did not submit the applicant's hospital records and X-rays, as pointed out by the applicant. Yet, even assuming that this evidence actually exist, the Court is of the view that without a medical report containing the diagnosis and a possible link between the illness allegedly suffered by the applicant and the alleged ill-treatment, no decisive importance could be attributed to the hospital records and the X-rays.

50. In the light of the above considerations and in the absence of any decisive evidence in support of the first applicant's allegations, the Court cannot find beyond all reasonable doubt that the applicant was subjected to ill-treatment. The Court is therefore led to conclude that there has been no violation of Article 3 of the Convention under its substantive limb.

2. The responsibility of the respondent State in the light of the procedural aspect of Article 3 of the Convention

51. The applicant alleged that there had not been an effective investigation into his allegations of ill-treatment. In particular, the Aydın Public Prosecutor did not take statements from the other suspects who had been in police custody or the police officers who had been on duty at the material time.

52. The Government submitted that the domestic authorities had fulfilled their obligation to conduct an effective investigation into the applicant's allegations. They contended that the Aydın Public Prosecutor had decided to end the investigation as none of the medical reports indicated any injury on the applicant's person.

1. These judgments are not final yet.

53. The Court reiterates that Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see, in particular, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005). One of the minimum standards of effectiveness defined by the Court's case-law is that the competent authorities act with exemplary diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004).

54. In the present case, the Court has not found it proved, on account of a lack of evidence, that the first applicant was ill-treated. Nevertheless, as it has held in previous cases, that does not preclude his complaint in relation to Article 3 from being "arguable" for the purposes of the positive obligation to investigate (see, *mutatis mutandis*, *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 112). In reaching this conclusion the Court has had particular regard to the consistency of the first applicant's allegations both when he approached the national authorities and in his submissions to the Court. An effective investigation was therefore required.

55. The Court observes, at the outset, that a preliminary investigation was indeed conducted by the Aydın public prosecutor. However, the Court is not persuaded that this investigation was conducted either diligently or effectively.

56. In this connection, the Court notes that the applicant asked his representative to secure him a medical examination on 26 February 2001 and his representative applied to the public prosecutor's office to that effect on 2 March 2001. However, although the Aydın Public Prosecutor requested the prison authorities to send the applicant to the State hospital for medical examinations on the same day, the applicant was not able to undergo a medical examination until 29 March 2001; it took the prison authorities 27 days to carry out the public prosecutor's order. The Court has already held that the authorities must act as soon as an official complaint has been lodged in cases involving allegations of torture or ill-treatment (see *Batı and Others,* cited above, § 133) since a prompt response by the authorities in investigating such complaints may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 54, 2 November 2004). The Court finds that the prison authorities' inactivity for almost four weeks, when it came to securing the applicant's medical examination, does not comply with the requirement of "promptness" having regard, in particular, to its possible consequences, such as the disappearance of the traces of the alleged ill-treatment.

57. The Court further observes that the Aydın Public Prosecutor relied solely on the medical reports issued on 15, 16 and 21 February 2001 and the medical report issued during the investigation. Nor did the Prosecutor

question the police officers who had been on duty during the applicant's detention in the Aydın police headquarters, the other detainees or the applicant himself. The Prosecutor also failed to take into account the evidence submitted by the applicant, namely the prescriptions for anti-inflammatory medicine and the cervical collar, or address the contradiction between the medical report of 30 March 2001 and the prescription of 4 April 2001.

58. In the light of the above, the Court concludes that the applicant's allegations of ill-treatment were not effectively investigated by the domestic authorities as required by Article 3 of the Convention.

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

III. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 OF THE CONVENTION

60. In application no. 71912/01, the applicants complained under Article 5 § 3 of the Convention that they had been held in police custody for seven days without being brought before a judge or other officer authorised by law to exercise judicial power. In their submissions dated 13 December 2001 in the same application, the applicants further contended under the same head that the length of their detention pending trial had been excessive.

A. As regards the applicants' detention in police custody

61. The Government submitted that the applicants had failed to invoke Article 5 of the Convention before the domestic authorities or challenge the decision to extend their custody. The Court has already examined and rejected the Government's preliminary objection in similar cases (see, for example, *Öcalan v. Turkey* [GC], no. 46221/99, §§ 66-71, ECHR 2005-...). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. It therefore finds that this part of the application is admissible.

62. As regards the merits of this complaint, the Court observes that the applicants' detention in police custody lasted seven days. It reiterates that, in the case of *Brogan and Others v. the United Kingdom* (29 November 1988, § 62, Series A no. 145 B), it found that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict time constraints of Article 5 § 3 of the Convention. In the light of the principles enunciated in the *Brogan* case, the Court cannot accept that it was necessary to detain the applicants for seven days without judicial intervention even if the activities of which the applicants stood accused were serious.

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

B. As regards the applicants' detention on remand

63. The Government submitted that this complaint should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention. The Government argued that the applicants could have, pursuant to Article 128 of the former Code of Criminal Procedure, challenged the length of their detention in police custody. They further maintained that the applicants could have sought compensation pursuant to Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained.

64. The Court recalls that it has already examined and rejected the Government's preliminary objections in similar cases (see, for example, *Karatay and Others v. Turkey*, no. 11468/02, § 35, 15 February 2007; *Bayam v. Turkey*, no. 26896/02, § 16, 31 July 2007). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. As a result, it rejects the Government's preliminary objections.

65. However, the Court considers that this part of the application is inadmissible for the following reasons.

66. The Court notes that the applicants' detention on remand began on 14 February 2001, when they were arrested, and ended on 14 May 2002, when the first-instance court convicted them and ordered their release, having regard to the total amount of time they had spent in detention. The period to be taken into consideration thus lasted fifteen months.

67. The Court observes in this connection that the İzmir State Security Court considered the applicants' continued detention at the end of each hearing, either of its own motion or at the applicants' request. The Court further observes that the offence for which the applicants and eleven other suspects were charged was of a serious nature, since it concerned forming a criminal organisation. Having regard to the complexity of the case and the serious nature of the offence of which the applicants were charged and later convicted, the Court finds that the reasons given by the national courts for refusing release were relevant and sufficient to justify the applicants' continued detention for fifteen months, in particular having regard to the evidence in the case file (see paragraph 6 and 12 above). Accordingly, it concludes that the length of time in detention was not unreasonable.

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

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) OF THE CONVENTION

69. In application no. 36397/03, the applicants alleged that their defence rights had been violated as they had been denied access to a lawyer during their detention in police custody. They relied on Article 6 § 3 (c) of the Convention.

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

71. As regards the merits, the Court reiterates that it has already examined the same grievance in the case of *Salduz v. Turkey* and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 (cited above, §§ 56-62). The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Salduz* judgment. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case. V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged violations of Articles 5 and 6 of the Convention

72. The applicants complained under Article 5 § 5 of the Convention that they had not had a right to compensation in respect of the length of their detention in police custody and pending trial. They further alleged under Articles 6 §§ 1 and 2 that the İzmir State Security Court had not been an independent and impartial tribunal in that it had relied on unlawful evidence, such as the illegal recording of their telephone conversations and statements which had been taken from them under duress, added to the case file by the public prosecutor, and that it had convicted them without awaiting the judgment of the Aydın Criminal Court. They submitted under Article 6 § 3 (b) and (d) of the Convention that their detention in Aydın prison had deprived them of the opportunity to contact their lawyer easily and that the State Security Court had not given them the opportunity to comment on the illegal telephone recordings submitted by the prosecution. The applicants further alleged under Article 7 of the Convention that their conviction had been unlawful as it had been based on insufficient evidence.

73. Having regard to the facts of the case, the submissions of the parties and its finding of a violation of Articles 5 § 3 and 6 § 3 (c) of the Convention above (see paragraphs 62 and 71 above), the Court considers that it has examined the main legal questions raised under Article 5 and 6 in the present case. It concludes therefore that there is no need to make a

separate ruling on the applicants' remaining complaints under these provisions (see *Yalçın Küçük v. Turkey (no. 3)*, no. 71353/01, § 40, 22 April 2008; *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Getiren v. Turkey*, no. 10301/03, § 132, 22 July 2008).

B. Alleged violations of Article 8 of the Convention and Article 1 of Protocol No. 1

74. The applicants contended under Article 8 of the Convention that their telephone conversations and their conversations during their detention in police custody had been illegally recorded. They finally complained under Article 1 of Protocol No. 1 about the seizure of their car and mobile telephones by the national authorities.

75. In the light of all the material in its possession, the Court finds that the above submissions by the applicants do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The first applicant claimed 25,000 euros (EUR) and the second applicant claimed EUR 15,000 in respect of non-pecuniary damage.

78. The Government contested the applicants' claims.

79. The Court notes that it has found violations of Articles 3, 5 § 3 and 6 § 3 (c) of the Convention in respect of the first applicant, Rifat[1] Böke. As regards the second applicant, Halil Kandemir, it has found violations of Articles 5 § 3 and 6 § 3 (c) of the Convention. The Court considers, on the one hand, that the finding of a violation in respect of Article 6 § 3 (c) constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicants. On the other hand, the Court accepts that the non-pecuniary damage suffered on account of the violations of Articles 3

1. The name of Rıfat Böke has been changed to Rifat Böke.

and 5 § 3 of the Convention cannot be compensated solely by the findings of violations. Making its assessment on an equitable basis, the Court awards Rifat[1] Böke EUR 6,500 in respect of non-pecuniary damage. It also awards Halil Kandemir EUR 1,500 under this head.

80. Furthermore, the Court considers that the most appropriate form of redress would be the retrial of the applicants in accordance with the requirements of Article 6 § 1 of the Convention, should the applicants so request (see, *Salduz*, cited above § 72).

B. Costs and expenses

81. The applicants also claimed EUR 6,000 for the costs and expenses incurred before the domestic courts and the Court.

82. The Government contested their claim.

83. 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, the applicants have not substantiated that they have actually incurred the costs claimed. Accordingly, the Court makes no award under this head.

C. Default interest

84. 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. *Joins* the applications;

2. *Declares* admissible the first applicant's complaints concerning his alleged ill-treatment and the alleged ineffectiveness of the related investigation, and both applicants' complaints concerning the length of their detention in police custody and the lack of legal assistance while in police custody;

3. *Declares* the remainder of the applications inadmissible;

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1. The name of Rıfat Böke has been changed to Rifat Böke.

4. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb in respect of the applicant Rifat[1] Böke;

5. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb in respect of the applicant Rifat[2] Böke;

6. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicants' detention in police custody;

7. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention on account of the lack of legal assistance to the applicants while they were in police custody;

8. *Holds* that there is no need to examine separately the applicants' other complaints under Articles 5 and 6 of the Convention;

9. *Holds*

(a) that the respondent State is to pay within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement:

(i) EUR 6,500 (six thousand five hundred euros) to Rifat[3] Böke, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) to Halil Kandemir, plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

1. The name of Rıfat Böke has been changed to Rifat Böke.
2. The name of Rıfat Böke has been changed to Rifat Böke.
3. The name of Rıfat Böke has been changed to Rifat Böke.

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

Done in English, and notified in writing on 10 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President