

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

SECOND SECTION

# CASE OF ABO v. TÜRKİYE

*(Application no. 3772/17)*

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Unfair proceedings concerning applicant's application for reopening of criminal proceedings following Court's finding of violation of Art 6 §§ 1 and 3 (c) in previous case brought by him due to lack of legal assistance available while in police custody • Jurisdiction *ratione materiae* • Alleged unfairness of proceedings concerning reopening application constituting a "new issue" undecided by Court's previous judgment • Art 6 applicable under its criminal limb to proceedings concerning reopening application • Trial court's decision dismissing reopening application based on automatic and insufficient reasoning and Constitutional Court's failure to remedy that shortcoming
Art 6 § 1 (criminal) • Reasonable time • Excessive length of proceedings concerning the reopening application based on Court's finding of a violation and with the applicant being in detention • Trial court's failure to show the required due diligence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 November 2025

**FINAL**

23/03/2026

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



**In the case of Abo v. Türkiye,**

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Stéphane Pisani,
Juha Lavapuro,
Hugh Mercer*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 3772/17) against the Republic of Türkiye 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 Davut Abo ("the applicant"), on 5 December 2016;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning the alleged unfairness and excessive length of proceedings and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 7 October 2025,

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

# INTRODUCTION

1. The application concerns the alleged unfairness of proceedings in which the domestic courts dismissed an application by the applicant for the reopening of criminal proceedings, which was based on the Court's judgment finding a violation in respect of him (see *Davut Abo v. Turkey* [Committee], no. 22493/07, 26 November 2013), and the alleged excessive length of those proceedings.

# THE FACTS

2. The applicant was born in 1975 and is serving a prison sentence in Diyarbakır. The applicant was represented by Ms E. Akgül, a lawyer practising in Diyarbakır.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

## I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. On 1 October 2000 the applicant was arrested on suspicion of membership of an armed terrorist organisation, namely the PKK (Workers' Party of Kurdistan).

6. On 4 October 2000 the applicant gave a statement to the police in the absence of a lawyer, stating that he and four other people had decided to hold an unauthorised demonstration in order to protest against the arrest of Abdullah Öcalan in 1998, and to carry out an armed attack on the police forces involved. A couple of days after that decision, S.K. had invited several individuals to his office, including the applicant, A.I., H. and N.G. He had given a Kalashnikov rifle to A.I., and a pistol to both H. and N.G. The applicant went on to state that they had then attended an unauthorised meeting organised by the PKK in the Küçükkırım district of Ceyhan, Adana (a city in the south of Türkiye), and had later positioned themselves on the roof of a building from where A.I., H. and N.G. had shot at the police officers while the applicant and S.K. had acted as lookouts.

7. On 5 October 2000 the applicant gave a statement to the Beytüşşebap public prosecutor, in the absence of a lawyer, and maintained the statement he had made to the police. On the same day, the applicant was questioned by the investigating judge in the absence of a lawyer, and confirmed the statements that he had made to the police and the public prosecutor, adding that he had done so in a sincere manner and out of remorse. The applicant further stated that he was relying on the State's justice system and expressed his wish to benefit from Law no. 3419 on repentance (*Pişmanlık Yasası*).

8. On 22 December 2000 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment charging the applicant, under Article 125 of the Criminal Code as then in force, with undermining the unity of the State and seeking to remove part of the national territory from the State's control.

9. At a hearing held on 22 February 2001 the applicant gave evidence in person. He denied all the accusations against him and retracted his statements given to the police, the public prosecutor and the investigating judge. He stated that he had been threatened by the police while being taken to both the public prosecutor and the investigating judge, and that he had thought that he was being brought before police officers when he had been taken to the offices of the prosecutor and the judge. He complained that he had been subjected to torture in police custody. During the hearing, the applicant read out his written submissions.

10. On 9 November 2006 the Diyarbakır Assize Court convicted the applicant as charged and sentenced him to aggravated life imprisonment.

11. On 10 May 2007 the Court of Cassation upheld the above-mentioned judgment.

## II. THE COURT'S JUDGMENT IN RESPECT OF THE APPLICANT

12. On 15 May 2007 the applicant lodged an application with the Court and complained, *inter alia*, under Article 6 of the Convention that he had not had a fair trial, arguing that he had been denied access to a lawyer while in police custody and a trial within a reasonable time. The applicant further complained of a breach of Article 3 of the Convention, submitting that he had been tortured while in police custody and that the domestic authorities had failed to conduct an effective investigation into his ill-treatment complaint.

13. By a judgment dated 26 November 2013, a Committee of the Court, consisting of three judges, found a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant, and a further violation of Article 6 § 3 (c) of the Convention, taken in conjunction with Article 6 § 1, on account of the lack of legal assistance available to him while in police custody. Under Article 41 of the Convention, the Court indicated that the most appropriate form of redress would be the retrial of the applicant in accordance with the requirements of Article 6 §§ 1 and 3 (c) of the Convention, should he so request, and awarded him 3,900 euros (EUR) in respect of non-pecuniary damage. The Court declared the applicant's complaint under Article 3 of the Convention inadmissible as being manifestly ill-founded on account of his failure to substantiate his complaint with appropriate evidence and to lay the basis of an arguable claim that he had been ill-treated in police custody.

## III. PROCEEDINGS CONCERNING THE APPLICANT'S APPLICATION TO HAVE THE CRIMINAL PROCEEDINGS AGAINST HIM REOPENED

14. On 7 April 2014 the applicant's lawyer lodged an application for the reopening of the proceedings against him with the Diyarbakır Fourth Assize Court ("the trial court"), which had special jurisdiction to hear cases relating to the aggravated crimes specified in Article 250 § 1 of the Code of Criminal Procedure, as in force at the material time. The application was based on the Court's judgment in respect of the applicant in *Davut Abo* (cited above), in which the Court had found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1, on account of the lack of legal assistance available to the applicant while in police custody, and the lawyer indicated that the judgment had become final on 26 November 2013.

15. On 15 May 2014 the trial court asked the Ministry of Justice to confirm whether the Court's judgment had become final, and if so, on which date.

16. In her written submissions dated 4 November 2014, the applicant's lawyer asked the trial court whether it had ruled on the application for the

reopening of the proceedings, and if it had not, urged the court to do so given the long period of time that had passed since the application had been lodged.

17. On 5 November 2014 the trial court sent another letter to the Ministry of Justice, reiterating its request dated 15 May 2014.

18. By a letter dated 27 November 2014, the Department of Human Rights of the Ministry of Justice informed the trial court that the Court's judgment had become final on the date of its delivery, and described what steps needed to be taken to find the Court's judgments in the HUDOC database. The letter further stated that the trial court had already been notified of the judgment on 3 April 2014, as the court which had conducted the trial in that case.

19. On 18 February 2015 the trial court found, without holding a hearing, that the application for the reopening of criminal proceedings was admissible, holding that it had been lodged by the accused within the statutory one-year period prescribed by domestic law, and based on a judgment of the Court in which a violation had been found. The trial court decided to send the application in question to the public prosecutor, asking him to submit his observations within seven days.

20. In his written observations dated 17 March 2015, the public prosecutor invited the trial court to find the application admissible, taking the view that it complied with the conditions laid down in Article 311 § 1 (f) of the Code of Criminal Procedure.

21. On 15 April 2015 the trial court, applying Article 319 § 2 of the Code of Criminal Procedure (admissibility - notification to the parties for submissions), granted seven days to the public prosecutor and the applicant's lawyer to file observations and adduce evidence. It stated that, once these had been submitted, it would then rule on the application for reopening under Article 321 of the Code of Criminal Procedure (merits - dismissal for lack of merit or acceptance of the application).

22. In his written submissions dated 21 April 2015, the public prosecutor asked the trial court to grant the application for the reopening of criminal proceedings, taking the view that it fulfilled the conditions enumerated under Article 311 § 1 (f) of the Code of Criminal Procedure. However, the public prosecutor submitted that the execution of the applicant's sentence should be maintained, because the Court's finding of a violation concerned only shortcomings of a procedural nature, and not a substantive aspect of the case.

23. In her written submissions dated 4 May 2015, the applicant's lawyer invited the trial court to grant the application and to conduct the trial *de-novo* by holding hearings and hearing evidence from several new witnesses whose testimony would have a substantial bearing on the trial. In that regard, the lawyer asked the court to hear M.T. and M.A., who would be able to testify that the applicant had been ill-treated while in police custody, resulting in his having to sign statements in the absence of a lawyer. Moreover, the lawyer asked the trial court to enquire about a police officer whose testimony – specifically, his false statement that the applicant had taken part in the

incident in Adana – had played a significant role in the applicant's conviction. On that basis, the lawyer urged the trial court to examine the merits of the case by holding hearings and conducting a thorough assessment. Accordingly, the lawyer asked for the release of the applicant, who had been in prison for fifteen years.

24. On 8 May 2015 the trial court dismissed the application for the reopening of proceedings pursuant to Article 321 § 1 of the Code of Criminal Procedure for lack of merit. In its two-and-a-half-page decision, the court first summarised the applicant's statements to the police, the public prosecutor and the investigating judge and at the trial, then the outcome of the ensuing trial, his application to the Court and the Court's judgment, and stated:

> "[W]hen the content of the Court's judgment finding a violation is assessed, it can be seen that the Court rejected the convicted person's allegations that he had been ill-treated or subjected to torture while in police custody, as well as those concerning the use of allegedly unlawful evidence. The following decision to dismiss the application for the reopening of criminal proceedings has therefore been made, since it is not possible to remedy the issues that gave rise to a violation by way of a retrial and since it has been established that those issues did not have an impact on the merits of the previous conviction ..."

25. On 26 May 2015 the applicant's lawyer lodged an objection against the trial court's decision, arguing that it contravened the Constitution, the Code of Criminal Procedure, the Convention and the general principles of law for the following reasons. Firstly, the lawyer submitted that the applicant's conviction under Article 125 of the former Criminal Code had rested on the statements he had made to the police in the absence of a lawyer, which was the basis on which the Court had found a violation of Article 6 in respect of him. In that connection, the lawyer pointed out that the Court had relied on the fact that the domestic courts had made use of the applicant's statements to the police, the public prosecutor and the investigating judge, which had been taken in the absence of a lawyer. Moreover, the Court had indicated that the retrial of the applicant would be the most appropriate way of redressing the violation found. However, the trial court had denied the applicant exactly that by dismissing the application for reopening of the proceedings without assessing any of the requests the applicant's lawyer had made in her written submissions dated 4 May 2015.

26. On 27 October 2015 the trial court examined and dismissed the applicant's objection of 26 May 2015, holding that it was not valid.

27. On 2 November 2015 the Diyarbakır Fifth Assize Court dismissed the applicant's objection, holding that the trial court's decision was in line with the law and procedure and that it did not contain any inaccuracies.

## IV. INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT

28. On 18 December 2015, the applicant lodged an individual application with the Constitutional Court, complaining, among other things, of the

alleged unfairness of the proceedings that had led to the dismissal of the application for the reopening of proceedings, based on the grounds raised before the Diyarbakır Assize Courts.

29. On 9 June 2016 the Constitutional Court declared the application inadmissible. As regards the alleged unfairness of the proceedings concerning the applicant's application for reopening, the Constitutional Court first held that applicants could lodge individual applications concerning the alleged violations of their rights which had taken place in proceedings conducted under Article 311 of the Code of Criminal Procedure (grounds for reopening criminal proceedings). The Constitutional Court further observed that having received his application, the trial court had granted him time to submit his observations and adduce evidence. Subsequently, the trial court had refused the application on the grounds that the Court's finding of a violation in respect of the applicant could not be remedied by a retrial and that the violation had not affected the merits of his conviction. In the Constitutional Court's view, the trial court had done so after assessing the previous case file concerning the applicant's conviction, the Court's judgment and the applicant's allegations in their entirety. Accordingly, the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded, holding that the domestic courts' judgments had not contained any explicit and manifest arbitrariness and that the applicant's allegations had been of a fourth-instance nature.

30. As regards the applicant's complaint concerning the trial court's failure to hold a hearing when examining his application for reopening, the Constitutional Court first reiterated that one of the central pillars of the right to a fair trial was the fundamental principle that proceedings were to be conducted by holding a hearing open to the public. The right to a fair trial would not be violated in cases where a first-instance court had held hearings before delivering its decision, even if no hearing had been held at the appeal stage (*kanun yolu incelemesi*). In the Constitutional Court's view, the law regulated the conditions under which the reopening of proceedings, which had the nature of an extraordinary legal remedy, could be granted and made it clear that such applications would be refused, without a hearing being held, if they were devoid of merit. Carrying out an assessment not relating to the merits of the dispute, without holding a hearing, did not violate the right to a fair trial. Consequently, the Constitutional Court found that the allegations made by the applicant did not entail a violation.

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. CODE OF CRIMINAL PROCEDURE (LAW NO. 5271, WHICH ENTERED INTO FORCE ON 1 JUNE 2005)

31. Article 311 § 1 of the Code of Criminal Procedure, entitled "Grounds for reopening criminal proceedings (*yargılamanın yenilenmesi*) for the benefit of convicted persons", provides as follows:

> "Criminal proceedings terminated by a final judgment shall be re-examined by way of reopening the proceedings for the benefit of convicted persons if:
>
> ...
>
> (f) the European Court of Human Rights finds a violation of a right protected by the Convention and the Protocols thereto and establishes that the criminal conviction was based on that violation. In such a case, an application for the reopening of proceedings may be made within one year of the date of the judgment of the European Court of Human Rights becoming final.
>
> ..."

32. Article 312 of the Code of Criminal Procedure, entitled "Postponement or stay of execution [of sentence]", provides as follows:

> "(1) An application for the reopening of proceedings shall have no effect on the execution of a [previously imposed] sentence. However, the court may suspend or stay the execution [of the sentence]."

33. Article 318 of the Code of Criminal Procedure, entitled "Decision and authority [competence to rule] on the admissibility or otherwise of an application to reopen the proceedings", provides as follows:

> "(1) An application for the reopening of [criminal] proceedings shall be made to the court which gave the [previous] judgment. That court shall rule on the admissibility of the application.
>
> (2) Where the Court of Cassation [sitting as a court of first instance] has given judgment in the circumstances referred to in Article 303, the application shall be lodged with the court that gave the [previous] judgment.
>
> (3) A decision as to whether an application for the reopening of proceedings is admissible or not shall be given without holding a hearing."

34. Article 319 of the Code of Criminal Procedure, entitled "Grounds for [finding] an application to reopen proceedings inadmissible and actions to be carried out where such an application is accepted", provided as follows:

> "(1) Where an application for the reopening [of criminal proceedings] has not been made in the manner provided for by law or no grounds requiring the reopening of the proceedings have been shown or no supporting evidence has been adduced, the application shall be dismissed as being inadmissible.
>
> (2) Otherwise, the application for the reopening [of criminal proceedings] shall be notified to the public prosecutor and the relevant party with an invitation to submit their views, if any, within seven days.

(3) Decisions given pursuant to this provision may be objected against."

35. Article 320 of the Code of Criminal Procedure, entitled "Collection of evidence", provides as follows:

"(1) If the court finds an application for the reopening of criminal proceedings admissible, it may delegate the collection of evidence to one of its judges or to another court on commission, or it may carry out these actions itself.

(2) The provisions concerning investigations shall be applied to the collection of evidence by the court or delegated judge or on commission.

(3) After the collection of evidence is completed, the public prosecutor and the person convicted in the previous judgment shall be asked to submit, within seven days, their conclusions or observations."

36. Article 321 of the Code of Criminal Procedure, entitled "Dismissal of an application for the reopening of [proceedings] for lack of merit, or acceptance [thereof]", provides as follows:

"(1) If the claims underpinning an application for the reopening of proceedings have not been sufficiently verified or, in the cases enumerated in sub-paragraphs (a) and (b) of Article 311 or sub-paragraph (a) of the first paragraph of Article 314, it appears from the state of the case that the [grounds put forward would] have no effect whatsoever on the judgment, the application for the reopening of the [criminal] proceedings shall be dismissed, without holding a hearing, for lack of merit.

(2) Otherwise, the court shall order the reopening of the proceedings and hold a hearing.

(3) An objection may be lodged against decisions made pursuant to this provision."

37. Article 323 § 3 of the Code of Criminal Procedure, entitled "Judgment to be given following a rehearing", provides:

"(1) [Following] the rehearing ... the court shall either uphold the previous judgment or quash it and give a fresh judgment.

(2) If the application for the reopening of the proceedings was lodged for the benefit of the convicted person, the new judgment ... shall not impose a heavier sentence than the sentence given in the previous judgment.

(3) In the event that an acquittal or a decision not to impose a sentence (*ceza verilmesine yer olmadığı kararı*) is delivered following the reopening of criminal proceedings, then, in accordance with Articles 141-144 of this Code, the person in question shall be compensated for any pecuniary and non-pecuniary damage that he or she has sustained as a result of the partial or full execution of the earlier judgment on conviction."

## II. FORMER CODE OF CRIMINAL PROCEDURE (LAW NO. 1412, WHICH ENTERED INTO FORCE ON 20 AUGUST 1929)

38. The relevant provisions of the former Code of Criminal Procedure (Law no. 1412), namely Articles 135, 136 and 138, as then in force, provided that any person suspected or accused of a criminal offence had a right of access to a lawyer from the moment he or she was taken into police custody.

In accordance with section 31 of Law no. 3842 of 18 November 1992, which amended the legislation on criminal procedure, the above-mentioned provisions were not applicable to persons accused of offences falling within the jurisdiction of the State Security Courts. On 15 July 2003, by virtue of Law no. 4928, the restriction on an accused's right of access to a lawyer in proceedings before the State Security Courts was lifted (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 27-29, ECHR 2008).

## III. THE CONSTITUTIONAL COURT'S CASE-LAW – AS SUBMITTED BY THE GOVERNMENT – ON THE COMPATIBILITY WITH ARTICLE 6 OF THE CONVENTION OF THE DOMESTIC COURTS' REFUSAL OF APPLICATIONS FOR THE REOPENING OF CRIMINAL PROCEEDINGS BASED ON THE COURT'S FINDING OF A VIOLATION OF THAT PROVISION

39. The Government submitted five Constitutional Court judgments concerning the fairness of proceedings, in which applications for the reopening of criminal proceedings based on the Court's finding of a violation of Article 6 had been decided.

40. In its *Lokman Sapan* judgment of 21 November 2013 (application no. 2013/723), the Constitutional Court examined the alleged unfairness of proceedings in which the domestic courts had dismissed the applicant's application for reopening of criminal proceedings in accordance with Article 321 of the Code of Criminal Procedure. The convicted person's application was based on the Court's judgment in *Sapan v. Turkey* ([Committee], no. 17252/09, 20 September 2011), in which a violation of, *inter alia*, Article 6 § 3 (c) of the Convention had been found on account of the systemic restriction imposed on his right of access to a lawyer while in police custody. The domestic court dismissed the application for reopening, holding that the procedural shortcoming in question could not be remedied by a retrial, that the conviction had not been based solely on the statements made in the absence of a lawyer and that he had been assisted by a lawyer at the trial stage. The Constitutional Court held that proceedings concerning applications for the reopening of criminal cases fell under Article 36 of the Constitution (the provision corresponding to Article 6 of the Convention) and, therefore, did not declare the application inadmissible. Instead, it examined the merits of the applicant's complaints that, among other things, the domestic court had refused his request without giving any reasons and without holding a hearing, and declared them inadmissible as being manifestly ill-founded, finding that there had clearly been no violation of Article 36 of the Constitution.

41. In its *Laleş Çeliker* judgment of 21 April 2016 (application no. 2013/8413), the Constitutional Court found a violation of the applicant's right of access to a court, holding that the domestic courts' interpretation of

Article 311 § 1 (f) of the Code of Criminal Procedure in dismissing her application for the reopening of criminal proceedings had been manifestly unreasonable. In that case, the applicant's request was based on the Court's judgment in *Çeliker v. Turkey* (no. 75573/01, § 21-22, 2 October 2007), in which a violation of Article 6 § 1 of the Convention had been found owing to a breach of her right to be tried by an independent and impartial tribunal on account of the presence of a military judge sitting on the bench of the Diyarbakır State Security Court which had tried and convicted her. In refusing the applicant's application for reopening, the Diyarbakır Fifth Assize Court had found that the conditions in Article 311 § 1 (f) of the Code of Criminal Procedure had not been met, holding that the issue forming the basis of the Court's finding of a violation had not been a ground on which her conviction had been based. The Constitutional Court observed that most of the trial had been conducted by a court in which a military judge had been sitting, and found that the Diyarbakır Court had failed to assess the question whether the "genuine" basis of the conviction had been negatively impacted by the fact that the trial had been conducted by a court which lacked independence and impartiality, which were the prerequisites of other procedural safeguards guaranteed by the right to a fair trial.

42. In its *Abdullah Altun* judgment of 17 July 2018 (application no. 2014/2894), the Constitutional Court found a violation of Article 36 of the Constitution in relation to proceedings in which the applicant's application for reopening of criminal proceedings on the basis of the Court's finding of a violation of Article 6 § 1 of the Convention in *Abdullah Altun v. Turkey* (no. 66354/01, §§ 20-22, 19 October 2006), owing to the breach of his right to be tried by an independent and impartial court on account of the presence of a military judge in the composition of the court which had convicted him, had been dismissed. The Diyarbakır Sixth Assize Court held that the conditions in Article 311 § 1 (f) of the Code of Criminal Procedure had not been met, because the violation had not formed the basis of the conviction, had been a procedural one and could not be remedied by a retrial. According to the Constitutional Court, the violation found by the European Court of Human Rights could only be remedied by means of a trial conducted by a court which did not include a military judge in its composition, and the presence of a military judge was sufficient to hold that the State Security Court which had convicted him had lacked independence and impartiality, regardless of the outcome of the trial. In any event, while the safety of the conviction had been prejudiced by the violation, the domestic courts' interpretation of the Code of Criminal Procedure had been not only inconsistent with the Court's judgment, but it had also fallen short of the level of care required by Article 36 of the Constitution.

43. In its *Cahit Tamur ve diğerleri* judgment of 24 February 2021 (application no. 2020/33709), the Constitutional Court examined the fairness of proceedings in which the domestic courts had dismissed the application for

the reopening of criminal proceedings on the grounds that it did not meet the criteria set out in Article 311 § 1 (f) of the Code of Criminal Procedure. The convicted persons' application was based on the Court's judgment in *Yaşar and Others v. Turkey* ([Committee], no. 1236/09, 28 November 2017), in which a violation of, *inter alia*, Article 6 § 3 (c) of the Convention had been found on account of the systemic restriction imposed on their right of access to a lawyer while in police custody. The Constitutional Court found that the evidence given by the applicants in the absence of a lawyer had been decisive in their conviction, meaning that the judgment of the European Court of Human Rights in respect of the applicants had affected the safety of their conviction. In the Constitutional Court's view, the violation found could thus only be redressed by excluding the evidence given without a lawyer being present. On that basis, the Constitutional Court found that the decision of the domestic courts had not been in accordance with the violation judgment, nor had it contained any assessment to the extent and with the care required by Article 36 of the Constitution and held that there had been a violation of the right to legal assistance ensured by the same provision.

44. In its *Ruşen Bayar* judgment of 15 June 2022 (application no. 2020/33709), the Constitutional Court examined the fairness of criminal proceedings which had been reopened following the domestic court's finding that the application for reopening had been admissible (namely, it had met the conditions in Article 311 § 1 (f) of the Code of Criminal Procedure). In that case, the domestic court found, without holding a hearing, that the statements that the applicant had made in the absence of a lawyer should be excluded from the reasoning of the conviction and decided not to amend the line of reasoning underlying the conviction in view of the other evidence in the case file. The Constitutional Court found a violation of Article 36 of the Constitution, holding that in order to comply with the judgment of a violation given by the European Court of Human Rights, the domestic courts should reopen the criminal proceedings by granting the applicant the rights of defence in accordance with the procedural safeguards ensured to him by the right to a fair trial. On that basis, the Constitutional Court found that the decision of the domestic courts had not been in accordance with the violation judgment, nor had it contained any assessment to the extent and with the care required by Article 36 of the Constitution. Accordingly, there had been a violation of the applicant's right to legal assistance taken in conjunction with his right to a fair trial. Paragraph 27 of the judgment reads as follows:

> "... As a matter of fact, a judgment finding a violation given by the Court has been accepted as a ground for a retrial in Law no. 5271 on the Code of Criminal Procedure, with a view to ensuring the effective protection of fundamental rights and freedoms in theory as well as in practice. Law no. 5271 leaves no discretion to the judicial authorities on this matter and entails that a case which is concluded with a final decision is to be retried through the reopening of the proceedings (see [Constitutional Court judgment] *Nihat Akbulak* [GC], application no. 2015/10131, § 37, 7 June 2018) ..."

# THE LAW

## I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicant complained, under Article 6 § 1 of the Convention, that the proceedings concerning his application for the reopening of criminal proceedings against him following the Court's judgment in *Davut Abo v. Turkey* [Committee], no. 22493/07, 26 November 2013) had been unfair in that the domestic court had neither carried out an examination of his submissions nor made any enquiries in that connection. In the same vein, the applicant contended that the proceedings had been excessively long. The relevant parts of Article 6 § 1 of the Convention provide as follows:

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

### A. Admissibility

46. The Government raised three preliminary objections, arguing that (i) the Court had no jurisdiction under Article 46 of the Convention to deal with the present application; (ii) the proceedings whereby the applicant's application for reopening had been assessed had not fallen within the scope of Article 6; and (iii) the application was manifestly ill-founded.

47. The applicant contested those submissions.

#### *1. Whether the Court lacks jurisdiction* ratione materiae *under Article 46 of the Convention to examine the present application*

##### (a) The parties' submissions

48. The Government submitted that the Court had no jurisdiction to consider the present application, arguing that the applicant's complaints essentially concerned the domestic courts' failure to implement the Court's judgment in respect of him, because the complaints focused solely on the refusal to reopen the criminal proceedings despite the judgment in question. In the Government's view, the task of supervising the execution of the judgments of the Court fell, in accordance with Article 46 of the Convention, within the remit of the Committee of Ministers, which had decided to close its examination of, *inter alia*, the applicant's case on 7 June 2018, after being duly apprised of the domestic courts' refusal to reopen the criminal proceedings against him.

49. The Government further submitted that there were no new issues which could have entrusted the Court with jurisdiction to examine the present application. In fact, the present application was markedly different from *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, 11 July 2017),

because the procedures followed by the Portuguese Supreme Court regarding the reopening of proceedings and those applicable in Turkish law were different. Additionally, unlike the applicant in *Moreira Ferreira* (cited above), the applicant in the present case had not put forward a new issue which had not been examined in the Court's judgment of 26 November 2013 in respect of him. Lastly, the proceedings before the Committee of Ministers had already been completed, which had not been the case in *Moreira Ferreira* (cited above), and this was further proof that the trial court's refusal of the applicant's application for reopening of the proceedings did not constitute a new fact.

50. In the Government's view, the present application was more akin to *Öcalan v. Turkey* ((dec.), no. 5980/07, 6 July 2010), where the Court had concluded that it had no jurisdiction to consider the application under Article 46 of the Convention, as the domestic courts' decision rejecting that applicant's application for reopening of the proceedings was similar in type and content to the decisions in the present case. In that case, the application for reopening, based on the Grand Chamber's judgment in *Öcalan v. Turkey* ([GC], no. 46221/99, ECHR 2005-IV), had been dismissed because the Court had found that even if the violations of Article 6 of the Convention had not been committed, the applicant would have been convicted on the basis of the same provisions of the Criminal Code as those which had been the subject of the Grand Chamber judgment. Accordingly, the Court had found that no new factual or legal elements that had not been examined and determined by the previous judgment had been brought before the domestic courts. Moreover, in *Öcalan* ((dec.), cited above), the Court had also attached weight to the fact that the execution process in respect of the previous judgment had been completed, which was also the case in relation to the present application.

51. The Government further submitted that the grounds on which the Diyarbakır Fourth Assize Court had refused the applicant's application for reopening of the proceedings, namely that it had not been possible to remedy the violations by means of a retrial and that the violations had not affected the merits of his conviction, had been comparable to the situation in *Öcalan* ((dec.), cited above) in that they had not raised a new issue. In any event, the Assize Court had not conducted a new trial which would have required an assessment of the procedural safeguards, and its decision dismissing the applicant's application for reopening did not contain any new relevant grounds or information. Accordingly, the Government contended that the Court was not able to deal with the present application.

52. The applicant invited the Court to disregard the Government's observations, arguing that the present application had given rise to new issues stemming from the domestic courts' refusal of his application to have the proceedings reopened and their failure to comply with the requirements arising from the Court's judgment finding a violation of his right to a fair trial.

**(b) The Court's assessment**

*(i) General principles*

53. The Court does not have jurisdiction to determine whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments. It has therefore refused to examine complaints concerning the failure by States to execute its judgments, declaring such complaints inadmissible *ratione materiae* unless a new issue is raised which was undecided in the earlier judgment (see *Egmez v. Cyprus*, no. 12214/07, §§ 50-51, 18 September 2012; see also *Moreira Ferreira*, cited above, § 47). The determination of the existence of a "new issue" very much depends on the specific circumstances of a given case (see *Egmez*, § 54, and *Moreira Ferreira*, § 47, both cited above).

54. Moreover, a refusal to examine complaints concerning the State's failure to execute the Court's judgments is distinct from the issue of the unfairness of proceedings for the review of an application to have the criminal proceedings reopened based on and following the Court's judgment finding a violation of the rights and freedoms protected by the Convention and the Protocols thereto. In fact, the Court has declared cases falling within the first category inadmissible as being incompatible *ratione materiae* with the provisions of the Convention, on the grounds that it does not have jurisdiction to determine whether a Contracting Party has complied with the obligations imposed on it by one of its judgments (see *Egmez*, cited above, § 50, with further references, which was quoted in full in *Bochan v. Ukraine (no.2)* [GC], no. 22251/08, § 34, ECHR 2015). The inadmissibility decision in *Öcalan* ((dec.), cited above), on which the Government predicated a substantial part of their argument under the present head, undoubtedly fell within the first group of cases, in so far as it concerned the Court's finding that it had no jurisdiction under Article 46 of the Convention to examine that application.

55. However, the Court has declined to adopt the same stance in the second group of cases. In fact, in *Moreira Ferreira* (cited above), the Court held that the proceedings in which the Portuguese Supreme Court refused to review the applicant's conviction following the Court's judgment finding a violation of Article 6 § 1 of the Convention in respect of her "incontrovertibly" concerned the execution of that judgment. In the Grand Chamber's view, those proceedings had nevertheless been new and subsequent to its previous judgment. Moreover, the Court found that the applicant's complaints in that case concerned the reasons given by the Supreme Court to dismiss her application for a review, meaning that the fairness of the procedure for review could be examined from the standpoint of Article 6 of the Convention without encroaching on the prerogatives of the respondent State and the Committee of Ministers under Article 46 of the Convention.

*(ii) Application of the general principles to the present case*

56. In the present case, the Court reiterates that in *Davut Abo* (cited above) it found a violation of, *inter alia*, Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1, on account of the lack of legal assistance available to the applicant while in police custody. Subsequently, the applicant's application to have the criminal proceedings reopened based on the Court's judgment in his case was refused by the domestic courts on the grounds that the procedural shortcoming forming the basis of the Court's finding of a violation (i) could not be remedied and (ii) had not affected the merits of his conviction. While it is true that those developments occurred in the context of the execution of the Court's previous judgment concerning the applicant, that does not detract from the fact that the proceedings resulting in the domestic courts' refusal to reopen the criminal proceedings were new and subsequent to the Court's judgment. Those developments were new because in assessing the applicant's application to have the proceedings reopened, the domestic courts examined a new legal issue for the first time, namely whether the systemic restriction of his right of access to a lawyer had affected the merits of his conviction. They therefore took a fresh legal stance on that question and dismissed the applicant's application for reopening on the basis of the two above-mentioned grounds on which they relied, for the first time, in 2017.

57. In view of the above, the Court concludes that the alleged unfairness of the proceedings dealing with the applicant's application for reopening based on the Court's judgment is a "new issue" undecided by the Court's previous judgment in respect of the applicant (see *Kontalexis v. Greece (no. 2)*, no. 29321/13, § 28, 6 September 2018).

58. Accordingly, Article 46 of the Convention does not prevent the Court from assessing the present application. As regards the Government's argument that the Court lacked jurisdiction to examine the present application, given that the Committee of Ministers had concluded its supervision of the execution of the *Davut Abo* (cited above) judgment after taking note of the domestic courts' decision on his application for reopening, the Court reiterates that it has already examined and dismissed an identical type of objection in previous cases (see *Tsonyo Tsonev v. Bulgaria (no. 4)*, no. 35623/11, § 35, 6 April 2021, and compare *Panju v. Belgium (no. 2)*, no. 49072/21, §§ 48-51, 23 May 2023). The Court therefore dismisses the Government's objection in that regard.

*2. Whether the criminal limb of Article 6 is applicable to the proceedings determining the applicant's application for the reopening of criminal proceedings*

**(a) The parties' submissions**

59. The Government argued that the application should be declared inadmissible as being incompatible *ratione materiae* with the provisions of the Convention, as the applicant's complaints concerning the proceedings determining his application to have the criminal proceedings reopened did not fall within the scope of Article 6 of the Convention. In that connection, the Government firstly submitted that the reopening of criminal proceedings was an extraordinary legal remedy in Turkish criminal procedural law, as it was provided for in the third chapter of Book Six of the Code of Criminal Procedure entitled "Extraordinary legal remedies". The reopening of proceedings also differed in its nature, scope and specific features from other ordinary remedies available in Turkish law.

60. The Government further submitted that Article 311 of the Code of Criminal Procedure contained, in sub-paragraphs (a) to (f), an exhaustive list of grounds for the reopening of proceedings in favour of convicted persons. A finding by the Court of a violation of a right protected by the Convention and the Protocols thereto and a determination by the Court that the criminal conviction had resulted from that violation were listed as a ground in Article 311 § 1 (f) of the Code. The Code provided that applications for reopening based on that sub-paragraph should be made within one year from the date on which the Court's judgment had become final. Moreover, such applications would not automatically suspend the execution of the sentence imposed by the final judgment in respect of which reopening was requested, which was another factor attesting to the extraordinary nature of the reopening of proceedings.

61. The Government submitted that the reopening of criminal proceedings was neither absolute nor automatic, because such applications were subjected to an admissibility assessment. That assessment was made in line with Article 319 of the Code of Criminal Procedure, and if the courts found it to be inadmissible, they would dismiss it for lack of merit without holding a hearing, in accordance with Article 321 § 1 of the Code. If, however, the courts found that the application was admissible under Article 319 and that it did not lack merit under Article 321, they would give a decision to reopen the proceedings under Article 321 § 2 of the Code and hold a hearing. At that point, the trial would be conducted again and the court would be required either to uphold the previous judgment or quash it and give a fresh judgment.

62. In the present case, the Government argued that the trial court had first examined, under Article 319 of the Code of Criminal Procedure, the admissibility of the applicant's application to have the proceedings reopened, which had been based on the Court's judgment in respect of him. Having

found that the application had satisfied the criteria set out in that provision, the trial court had dismissed it under Article 321 § 1 of the same Code as being devoid of merit since that examination had solely been aimed at deciding whether the application had been substantiated or not, and the trial court had not been called upon to "determine a criminal charge" when it had performed its examination under Article 318, Article 319 and Article 321 § 1 of the Code of Criminal Procedure. Moreover, at that point in time the applicant had not been charged with a criminal offence, as the trial court had solely been reviewing the applicant's application for reopening and it had not carried out a fresh determination relating to the merits of the charge against him. According to the Government, the trial court had referred to the nature of the violation found and stated that it could not be remedied by means of the reopening of criminal proceedings. Had the trial court accepted the applicant's request, the guarantees of Article 6 could have become applicable, because after that stage, the criminal charge against him would have been the subject of a fresh determination.

63. In the Government's view, the Constitutional Court had "also" accepted that the examination of the applicant's application for reopening had not related to the merits of the dispute. Accordingly, the Government invited the Court to find that the complaints raised by the applicant did not fall under Article 6 of the Convention.

64. The applicant contested the Government's observations, arguing that the decisions of the domestic courts and the Constitutional Court had been arbitrary, and invited the Court to find a violation of Article 6 of the Convention in view of the domestic law and case-law, and the case-law of the Court.

**(b) The Court's assessment**

*(i) General principles*

65. Article 6 is not applicable to applications for the reopening of criminal proceedings, given that a person who, having been convicted with final effect, submits such an application is not "charged with a criminal offence" within the meaning of that Article (see *Moreira Ferreira*, cited above, § 61; *Franz Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI; and *Öcalan* ((dec.), cited above).

66. However, Article 6 of the Convention is applicable, in its criminal aspect, to criminal proceedings concerning remedies classified as extraordinary in domestic law where the domestic court is called upon to determine the charge. The Court therefore examines the issue of the applicability of Article 6 to extraordinary remedies by seeking to establish whether, during the consideration of the remedy in question, the domestic court was required to determine the criminal charge. Moreover, and more importantly, "the scope and nature of the 'examination' actually carried out"

may also lead the Court to conclude that such proceedings were decisive for the determination of criminal charges and thus render Article 6 § 1 applicable (see *Moreira Ferreira*, cited above, §§ 70 and 72, and see also *Trivkanović v. Croatia (no. 2)*, no. 54916/16, §§ 55-61, 21 January 2021, for the applicability of the civil limb of Article 6 § 1 in similar situations). Should such an extraordinary remedy lead directly to a reconsideration of the merits of the case or amendment of the final judgment, Article 6 § 1 would become applicable (see *Moreira Ferreira*, cited above, §§ 60-67).

67. In that regard, the Court has so far found the criminal limb of Article 6 of the Convention to be applicable to proceedings concerning the reopening of criminal proceedings where the domestic courts (i) were required to assess whether the Court had found a violation of a right relating to the fairness of proceedings (see *Kontalexis*, cited above, § 34, where the request to have the proceedings reopened was not allowed); (ii) undertook a re-examination of an applicant's case by excluding some pieces of evidence (namely, the confession made by the applicant in the absence of his lawyer) and reassessed the remainder of the evidence to conclude that it was sufficient to prove his guilt (see *Yaremenko v. Ukraine (no. 2)*, no. 66338/09, §§ 55-56, 30 April 2015, where the request for an extraordinary review was refused); and (iii) were tasked with considering the outcome of the completed domestic proceedings in relation to the findings of the Court and, where appropriate, ordered the re-examination of the case, which was likely to be decisive for the determination of a criminal charge (see *Moreira Ferreira*, cited above, § 69; *Serrano Contreras v. Spain (no. 2)*, no. 2236/19, § 27, 26 October 2021; and *Repeşco and Repeşcu v. the Republic of Moldova*, no. 39272/15, § 18, 3 October 2023 ).

*(ii) Application of the general principles to the present case*

68. The Court reiterates at the outset that in *Mehmet Zeki Doğan v. Türkiye (no. 2)* (no. 3324/19, § 58-60, 13 February 2024) it assessed Turkish criminal procedural law on the reopening of criminal proceedings based on the Court's finding of a violation (Article 311 § 1 (f) of the Code of Criminal Procedure) in detail and concluded that the guarantees of Article 6 of the Convention had been applicable in their entirety to the proceedings from, at least, the trial court's decision under Article 319 of the Code of Criminal Procedure on the admissibility of the reopening request, which was based on the Court's finding of a violation in *Mehmet Zeki Doğan v. Turkey* (no. 38114/03, 6 October 2009). This was because that decision was likely to be decisive for the determination of a criminal charge, given that from that point onwards, the trial court was required to assess the previous conviction in the light of the Court's judgment in respect of the applicant and thus make a fresh determination of it. The Court also held that in cases where criminal proceedings were reopened after a judgment had become final, all guarantees under Article 6 of the Convention applied fully to the subsequent reopened

proceedings, whatever the reason for that reopening might be, given that those proceedings concerned the "determination of a criminal charge" against the accused (see *Mehmet Zeki Doğan (no. 2)*, cited above, § 90).

69. In the present case, the Court observes that by its decision dated 18 February 2015 the Diyarbakır Fourth Assize Court found the applicant's application to have the criminal proceedings reopened admissible, having been lodged by a person authorised by law within the statutory time-limit and based on the Court's judgment finding a violation in respect of him (see paragraph 19). In so doing, and contrary to the Government's assertion, the trial court did not limit itself to assessing whether the conditions laid down in Article 319 of the Code of Criminal Procedure were satisfied, but it also incorporated into its admissibility assessment under that provision the first condition in Article 311 § 1 (f) of the Code, namely the Court's finding of a violation. Subsequently, the trial court invited the public prosecutor to submit his observations on the applicant's request within thirty days. The prosecutor took the view that the application was not devoid of merit, as, in the light of Article 311 § 1 (f) of the Code of Criminal Procedure, it fulfilled the conditions enumerated under Article 311. Thereafter, the trial court once again invited the public prosecutor and the defence to submit their observations within seven days. In the end, the trial court dismissed the application as being devoid of merit, taking the view that the violation found could not be remedied by a retrial and that the systemic restriction placed on the applicant's right of access to a lawyer had not had an impact on the merits of his conviction.

70. In the Court's view, the trial court's above-mentioned examination was comparable to the ones undertaken by the domestic courts in *Kontalexis*, *Moreira Ferreira*, and *Repeşco and Repeşcu* (all cited above). In particular, in assessing the applicant's application for the reopening of the proceedings, the trial court verified whether the Court had found a violation of his rights under the Convention and the Protocols thereto and engaged in an assessment of the application with a view to examining the outcome of the completed proceedings in the light of the Court's judgment and reached the conclusion that it had not affected the merits of his conviction. Accordingly, the examination in question was likely to be determinative of the criminal charge and to lead to a decision to reopen the criminal proceedings, a view adopted by the public prosecutor. In such circumstances, the Court finds that the guarantees of the criminal limb of Article 6 of the Convention were applicable to the proceedings which commenced with the applicant's application for the reopening of the proceedings dated 7 April 2014 and culminated in the Diyarbakır Assize Court's decision dated 8 May 2015 (see paragraph 24 above).

71. Moreover, in none of the judgments submitted by the Government did the Constitutional Court find the guarantees of the criminal limb of Article 6 of the Convention to be inapplicable to proceedings dealing with an

application for reopening under Article 311 § 1 (f) of the Code of Criminal Procedure based on the Court's finding of a violation of a right protected by the Convention and the Protocols thereto. On the contrary, the Constitutional Court found violations of the right to a fair trial at different stages of the domestic courts' examinations of applications for reopening lodged under the provision in question. In the same vein, while it is true that in dealing with the applicant's complaint regarding the domestic courts' failure to hold a hearing in the assessment of his application to have the proceedings reopened, the Constitutional Court took the view that the domestic courts' assessment did not concern the merits of the dispute; it did not find the application inadmissible as being incompatible *ratione materiae* with the provisions of the Convention. On the contrary, the Constitutional Court examined the applicant's complaint on its merits and found no violation of his right to a fair trial (see paragraph 30). The same also held true in respect of the complaint concerning the alleged unfairness of those proceedings (see paragraph 29 above).

72. In view of the above-mentioned developments in its case-law, the considerations regarding Turkish law, and the domestic courts' assessment in the present case, the Court concludes that the criminal limb of Article 6 of the Convention is applicable to the proceedings dealing with applications for reopening lodged under Article 311 § 1 (f) of the Code of Criminal Procedure, and dismisses the Government's preliminary objection to the contrary.

*3. Whether the application is manifestly ill-founded*

73. The Government argued that the applicant's complaints were of a fourth-instance nature, as they essentially concerned the domestic courts' assessment of the facts and application of the domestic law. Moreover, the Constitutional Court had assessed those complaints in detail and declared them inadmissible as being of a fourth-instance nature. The applicant had also enjoyed all the procedural safeguards inherent in the right to a fair trial in the proceedings dealing with his application for reopening. There had therefore been no arbitrariness in the proceedings in issue. Accordingly, the Government invited the Court to declare the application inadmissible as being manifestly ill-founded.

74. The applicant contested the Government's submissions, arguing that the domestic courts had failed to examine his submissions and to give relevant and sufficient reasons for their decisions. On that ground, the applicant invited the Court to declare the application admissible.

75. The Court considers that the application raises complex issues of facts and law which cannot be determined without an examination on the merits. It finds that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds and must therefore be declared admissible.

## B. Merits

### *1. Alleged unfairness of proceedings dealing with the applicant's application for reopening*

#### (a) The parties' submissions

76. The applicant submitted that the domestic courts' refusal of his application to have the criminal proceedings reopened had been both arbitrary and unlawful, given that they had not made any enquiries in relation to his requests and statements and had not carried out a sufficient examination. Similarly, his application to the Constitutional Court had been dismissed as a result of an arbitrary attitude on the part of that court. In the applicant's view, the reasons given by the domestic courts had been both insufficient – lacking any lawful basis – and inconsistent with the domestic law. Accordingly, the applicant took the view that the domestic courts had failed to comply with the requirements of Article 6 § 1 of the Convention.

77. The Government submitted that the trial court had accepted, in line with Article 311 § 1 (f) of the Code of Criminal Procedure, the applicant's application for the reopening of the proceedings, which had been based on the Court's finding of a violation, and had examined it in line with the Code. In doing so, the trial court had pursued the necessary correspondence to confirm whether the Court's judgment had become final, had obtained the parties' written observations on the application for reopening, and had examined the content of the previous proceedings resulting in his conviction, the Court's judgment and the parties' observations. As a result, the trial court had dismissed the application on the grounds that the violation found by the Court could not be remedied by a retrial and that it had not affected the merits of his conviction, given that the statements he had made without the assistance of a lawyer had not been the result of ill-treatment.

78. In view of the above, the Government submitted that the trial court had duly assessed the applicant's application for the reopening of proceedings and dismissed it by a reasoned judgment, which had stated the grounds on which it had been based. As regards the applicant's assertion that his application had been dismissed after an insufficient examination, the Government argued that his request to summon two witnesses, who allegedly had first-hand knowledge of his ill-treatment while in police custody, had also been dismissed by the trial court, which had referred in turn to the Court's conclusion that he had failed to lay the basis of an arguable claim that he had been ill-treated in police custody. Moreover, the applicant's complaints concerning the trial court's decision had first been duly examined by the Diyarbakır Fifth Assize Court and then by the Constitutional Court.

79. In any event, the Government further submitted that in *Davut Abo* (cited above), the Court had not stated that the remedy for the violation found would necessarily be the reopening of criminal proceedings, but had only

noted that it would be the most appropriate form of redress should the applicant so request. In the Government's view, that approach meant that the scope of the examination carried out by the trial court had been delimited by the content of the applicant's application for the reopening of proceedings, which concerned his allegations of ill-treatment, and not the restriction of his right to a lawyer while in police custody. Lastly, as regards the statements made by the applicant in the absence of a lawyer, the Government asserted that there had been no practical purpose in accepting his application for reopening in order to hear him in the presence of his lawyer, because after being in police custody, he had been represented by a lawyer during the first trial.

80. Consequently, the Government submitted that the procedure followed by the Diyarbakır Fifth Assize Court and the conclusion it had reached had fully complied with the requirements of a fair trial and could not be regarded as arbitrary. On that basis, they invited the Court to hold that there had been no violation of Article 6 § 1 of the Convention.

**(b) The Court's assessment**

*(i) General principles*

81. It is not for the Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention – for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (*Moreira Ferreira*, cited above, § 83, and see also *Serrano Contreras*, cited above, § 34).

82. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A). It must be clear from the decision that the essential issues of the case have been addressed (see *Taxquet v. Belgium* [GC], no. 926/05, § 91, ECHR 2010). In view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights

that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 305 *in fine*, 26 September 2023, with further references). Moreover, in cases relating to interference with rights secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see *Moreira Ferreira*, § 84, cited above, with further references).

*(ii) Application of the general principles to the present case*

83. The Court observes that in dismissing the applicant's application for the reopening of criminal proceedings, which was based on the Court's finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of him (see paragraph 13 above), the trial court relied on two grounds. It held firstly that the procedural shortcoming forming the basis of the Court's judgment (i) could not be remedied by a retrial and secondly that (ii) it had not affected the merits of his final conviction, because the Court had dismissed his complaints concerning his alleged ill-treatment while in police custody and the domestic courts' use of unlawful evidence, namely the statements extracted as a result of the alleged ill-treatment inflicted during that period.

84. As regards the first ground, the Court reiterates that it has set out a non-exhaustive list of factors which it has used in its case-law to assess the prejudice that the restrictions on the right to a lawyer may have had on the overall fairness of the proceedings (see, for a recapitulation of those criteria, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 274, 13 September 2016). It further notes that in *Ibrahim and Others* (ibid.), the Grand Chamber stated that it was re-interpreting the *Salduz* test and not altering it, with the result that the main principle underlying *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008) – namely, that the rights of the defence would, in principle, be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer were used for a conviction – remained valid. The question for the Court in each case is to assess whether the domestic courts afforded sufficient procedural safeguards calculated to ensure the overall fairness of the proceedings, despite the existence of a procedural shortcoming in relation to an applicant's right of access to a lawyer.

85. The Court further notes that the trial court's finding that the absence of a lawyer could not be remedied by a retrial would appear to reflect a too unnuanced view to the procedural shortcoming in question, in that the assertion it purports to make is considered valid regardless of the individual circumstances of a given case. Accordingly, the trial court's line of reasoning in the present case seems to have excluded a concrete assessment vested in

the facts of the applicant's case from the outset and fell short of the requirements of a Convention-compliant review of a procedural shortcoming under Article 6 of the Convention (compare and contrast the stance adopted by the Belgian Court of Cassation in *Deckmyn v. Belgium* ((dec.), no. 44813/14, 7 November 2023).

86. The Court also recalls its express findings in *Davut Abo* (cited above, § 47), "that the most appropriate form of redress" in the applicant's case "would be the re-trial of the applicant in accordance with the requirements of Article 6 §§ 1 and 3 (c) of the Convention, should he so request." Coming to the opposite conclusion to that of the Court, in the same case and without any explanation or further justification, was – given the applicant's express arguments before the trial court and what was at stake for him – not compatible with the trial court's duty to provide reasons according to Article 6 § 1 of the Convention.

87. Regarding the second ground, the Court observes that, in the trial court's view, so long as it was established that the applicant had not been subjected to ill-treatment while in police custody, the Court's finding of a violation of Article 6 § 3 (c) of the Convention – due to the lack of legal assistance available to the applicant while in police custody – did not affect the merits of his final conviction. However, the Court considers that adopting such an approach would effectively nullify the aforementioned violation and contradict the conclusion and the spirit of the *Davut Abo* (cited above) judgment.

88. Moreover, and more importantly, the Court has not yet limited its assessment of the overall fairness of the criminal proceedings to solely the question of whether a person who made incriminating statements in the context of his or her arrest and without the assistance of a lawyer was subjected to ill-treatment or not. Accordingly, while the second ground relied on by the trial court appears relevant, given that "the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy" is one of the non-exhaustive factors to be used in assessing the impact that the lack of legal assistance may have had on the overall fairness of the proceedings, the Court cannot regard it as sufficient to be in conformity with Article 6 § 1 of the Convention.

89. The Court notes that the Constitutional Court in its recent case-law on similar cases (see paragraphs 41 to 44) considered it more appropriate to exclude the evidence obtained in the absence of a lawyer. Taking into account the nature of the violation in the relevant case and the requirements arising from the Court's findings, the Constitutional Court rejected arguments based on the sufficiency of the "remaining evidence" in the case file or on the claim that such violations could not be remedied through a retrial. However, in the present case, the Constitutional Court failed to address this shortcoming and dismissed the applicant's individual application.

90. In view of the foregoing considerations, the Court concludes that the automatic and insufficient reasoning relied upon by the trial court to dismiss the applicant's request for the reopening of criminal proceedings, coupled with the Constitutional Court's failure to remedy that shortcoming notwithstanding its own well-established case-law, fell short of the requirements of Article 6 § 1 of the Convention.

91. There has therefore been a violation of Article 6 § 1 of the Convention.

92. In the light of the above, the Court is not required to separately assess whether the trial court adequately examined the applicant's remaining requests set out in his application for the reopening of criminal proceedings.

*2. Length of the proceedings concerning the applicant's application for the reopening of criminal proceedings*

**(a) The parties' submissions**

93. The applicant further complained that the length of the proceedings which had resulted in the dismissal of his application for the reopening of criminal proceedings had been excessive, entailing a further breach of Article 6 § 1 of the Convention.

94. The Government submitted that the proceedings in question had been conducted at three levels of jurisdiction, namely two different chambers of the Diyarbakır Fifth Assize Court and the Constitutional Court. In the Government's view, even though the applicant had lodged his application for reopening on 7 April 2014, the length of the proceedings should be calculated from 18 February 2015. On this date the trial court had confirmed that the application satisfied the admissibility criteria set out in the Code of Criminal Procedure. Prior to that date, it was unclear whether the application satisfied these criteria. Accordingly, the period to be taken into consideration had started on 18 February 2015 and ended on 9 June 2016 with the Constitutional Court's judgment, thus lasting one year, three months and twenty-two days at three levels of jurisdiction. Even assuming that it had started on 14 April 2014, the proceedings had lasted two years, two months and seven days in total and in any event, either of those durations should be regarded as reasonable under Article 6 § 1 of the Convention. In any event, the Government considered that there had been no period during which the trial court had been inactive. It had been necessary for the court to correspond, and it had not taken any steps that could have delayed the proceedings. Lastly, the Government argued that the period of the judicial recess from 20 July to 31 August each year, namely forty days regulated under Article 331 of the Code of Criminal Procedure should be deducted from the overall duration of the proceedings.

**(b) The Court's assessment**

95. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 150-52, 3 November 2022; *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

96. As regards the Government's contention that the applicant's complaints had not fallen within the scope of Article 6 of the Convention on the grounds that he had not been under a criminal charge, the Court reiterates that it has already found the criminal limb of Article 6 § 1 of the Convention to be applicable to the proceedings relating to the applicant's reopening request based on this Court's finding of a violation in respect of him (see paragraphs 68-72 above). The Government's contention on this point is thus dismissed.

97. Secondly, as regards the Government's argument that the period to be taken into consideration should only start from 18 February 2015 when the trial court had found that his application had satisfied the admissibility criteria, the Court makes the following observations. Where domestic courts limit their assessment to technical matters – such as whether a reopening request was submitted on time, by an authorised person, and in the correct format - then that stage of the process cannot be considered a fresh review of the criminal charge. (see *Hulki Güneş v. Turkey* (dec.), no. 17210/09, 2 July 2013).

98. However, the Court's finding in the present case that the criminal limb of Article 6 § 1 of the Convention was applicable to the proceedings in question was centred on the very nature of the assessment that the domestic courts must undertake under Article 311 § 1 (f) of the Code of Criminal Procedure, namely determining (i) whether there a violation was found by the Court, and (ii) whether the previous judgment was based on that violation. The Court also found that this latter aspect of the assessment was similar to the type of review carried out by the Portuguese Supreme Court in *Moreira Ferreira* (cited above). This led the Court to conclude that the criminal limb of Article 6 § 1 of the Convention was applicable to proceedings involving reopening requests, given the nature of the assessment in question and the Court's finding of a violation. Accordingly, the Court reiterates that the criminal guarantees of Article 6 § 1 of the Convention started applying from the applicant's application for the reopening of criminal proceedings, which was based on the Court's judgment dated 26 November 2013 in respect of him.

99. In view of the above, the Court dismisses the Government's argument concerning the starting point of the period to be considered, which is therefore 7 April 2014: the date on which the applicant lodged his application for the reopening of criminal proceedings based on the *Davut Abo* case (cited above). The period in question came to an end on 9 June 2016 with the Constitutional Court's judgment in respect of the applicant. The total duration of the proceedings was two years, two months and seven days at three levels of jurisdiction.

100. The Court further stresses that in a case where the application for the reopening of criminal proceedings was based on this Court's finding of a violation with the applicant being in detention, the domestic courts are under a duty to show due diligence in assessing such a request in order to give effect to the Court's judgments in a practical, effective and timely manner in line with the principle of subsidiarity which vests them with the primary responsibility in that regard. On that basis, the Court cannot uphold the Government's argument that the period of forty days in each year which correspond to judicial recess should automatically be deducted from the calculation of the overall period.

101. Moreover, it is true that the overall duration of the proceedings in the present case does not, by and of itself, seem excessive in view of the "rough rule of thumb" of one year per instance in Article 6 § 1 cases as set out in *Hutchison Reid v. the United Kingdom* (no. 50272/99, § 79, ECHR 2003-IV). This is further evidenced by the fact that the proceedings before the Diyarbakır Fifth Assize Court, which only took a couple of days, and those before the Constitutional Court, which handed down its decision in just five months and twenty-two days, even though it did not assess the applicant's complaint concerning the allegedly excessive length of the proceedings.

102. The Court's assessment should therefore focus on whether the duration of the proceedings before the trial court, which was just above eighteen months was compatible with the applicant's right to be tried within a reasonable time under Article 6 §1 of the Convention. In that regard, the Court notes that even though its judgment regarding the applicant was rendered by a Committee formation and was thus final on the date it was given, the trial court asked, on 15 May 2014, the Ministry of Justice to confirm whether the Court's judgment had become final, and if so, on which date (see paragraph 15 above). Subsequently, on 4 November 2014, the applicant's lawyer asked the trial court whether a decision had been made on her application for the reopening of criminal proceedings, which had prompted the trial court on 5 November 2014 to renew its request with the Ministry of Justice. In its reply dated 27 November 2014, the Ministry stated that the aforementioned judgment was final on the date of its delivery and that the judgment had already been sent on 3 April 2014 to the trial court as the court that conducted the trial.

103. In the Court's view, and contrary to the Government's contention, the steps taken by the trial court to ask the Ministry of Justice for the finalisation date of this Court's judgment was not only unwarranted, because Committee judgments are final as of their date of delivery, but they also caused it to remain inactive until 5 November 2014, on which date it renewed the request with the Ministry of Justice, only after the applicant's lawyer's inquiry concerning her application for the reopening of criminal proceedings. The Court therefore considers that the period between 3 April 2014, when the trial court was notified of the Court's judgment in respect of the applicant, and 27 November 2014 was attributable to the State and did not comply with the above-mentioned due diligence requirement.

104. Similarly, it took the trial court more than five months to dismiss the objection lodged by the applicant on 26 May 2015 against its decision of 8 May 2015, which had refused his application for the reopening of criminal proceedings on the grounds that it was "not found to be valid." (see paragraph 26 above for the trial court's decision dated 27 October 2015). In this connection, the Court notes that the trial court conducted the proceedings without holding a hearing.

105. In the Court's view, the foregoing considerations - including the two periods corresponding to approximately eleven months and thirteen days during which the trial court was either inactive or took steps that prolonged the proceedings in a manner attributable to the State - meant that it failed to display the requisite due diligence in conducting the proceedings. This rendered the proceedings before it unreasonably lengthy, and breached Article 6 § 1 of the Convention.

106. Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings before the trial court regarding the applicant's request for reopening of the criminal proceedings against him.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

107. Lastly, in his observations dated 26 April 2023 the applicant complained, for the first time, of a breach of his right to a fair trial, arguing that the trial court had failed to hold a hearing in the examination of his application for the reopening of the proceedings. However, this new complaint is not an elaboration on the applicant's original complaint to the Court, as it concerns previously unmentioned issues with respect to the fairness of the proceedings (see *Kohen and Others v. Turkey*, nos. 66616/10 and 3 others, § 40, 7 June 2022). It follows that this part of the application has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 250,000 euros (EUR) in respect of pecuniary damage, which corresponded to his inability to work for the past twenty-three years, during which time he had been in prison as a result of the proceedings forming the basis of the present application. As regards non-pecuniary damage, the applicant further claimed EUR 300,000, stating that he had been experiencing deep concern at having been in prison for so long on unjustified grounds. In that connection, the applicant pointed out that he had been tried and convicted of an offence for which he could have faced the death penalty.

110. The Government contested those claims as being unsubstantiated and excessive.

111. As to pecuniary damage, the Court rejects the claim in so far as it concerns the criminal proceedings forming the basis of the applicant's first application to the Court, given that the Court has already ruled on and rejected that part of the claim in its first judgment in respect of the applicant. As regards the remainder of the claim, the Court cannot speculate as to what the outcome of the applicant's retrial would have been had it been in conformity with Article 6, and therefore an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of that Article. It therefore makes no award in respect of pecuniary damage (see, *mutatis mutandis*, *M.T.B. v. Turkey*, no. 47081/06, § 68, 12 June 2018, with further references).

112. As to non-pecuniary damage, awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable (see *Mustafa Aydın v. Türkiye*, no. 6696/20, § 67, 18 March 2025). The Court further considers that the most appropriate form of redress would be the retrial of the applicant in accordance with the requirements of Article 6 §§ 1 and 3 (c) of the Convention, should he so request.

### B. Costs and expenses

113. The applicant also claimed EUR 4,741 for the costs and expenses incurred before the Court and submitted a timesheet in support of those claims which listed them as follows: (a) EUR 1,513 for drafting the application form (the recommended amount in the Union of Turkish Bar Associations' scale of fees for 2023 for the pursuance of legal matters before international judicial

bodies which did not require a hearing); (b) EUR 708 for translation expenses (fifty-nine pages at EUR 12 per page); (c) EUR 20 for postal expenses (two letters); and (d) EUR 2,500 corresponding to twenty hours of legal work undertaken by his lawyer.

114. The Government contested those claims, arguing that the applicant had failed to submit any valid supporting documents to show that the costs and expenses, including the lawyer's fees, had actually been incurred.

115. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims for translation and postal expenses in the absence of any supporting documents. However, it considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant (see *Zülküf Murat Kahraman v. Turkey*, no. 65808/10, § 55, 16 July 2019).

## FOR THESE REASONS, THE COURT,

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

2. *Holds* unanimously, that there has been a violation of Article 6 § 1 of the Convention in connection with the fairness of the proceedings;

3. *Holds*, by four votes to three, that there has been a violation of Article 6 § 1 of the Convention on account of the duration of the proceedings before the trial court;

4. *Holds*, by four votes to three,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Hasan Bakırcı<br>Registrar | Arnfinn Bårdsen<br>President |

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

# JOINT PARTLY DISSENTING OPINION OF JUDGES YÜKSEL, PACZOLAY AND PISANI

Although we agree with the finding of a violation of Article 6 § 1 on account of the unfairness of the proceedings on the reopening of the criminal proceedings following the Court's first judgment, we respectfully disagree with the finding of a violation concerning the length of proceedings, for the following reasons.

We note that, in the case-law, the Court usually looks at the overall length of proceedings and may find violations when the overall length of proceedings is excessive despite certain stages being conducted at an acceptable speed (see *Dobbertin v. France*, 25 February 1993, § 44, Series A no. 256-D, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 210-11, 27 June 2017). In this regard, we also note that although the majority did not consider that the total duration of the proceedings, amounting to two years, two months and seven days at three levels of jurisdiction, was excessive (see paragraph 101 of the judgment), it nevertheless concluded that the two specific periods had been unreasonably lengthy.

The majority found that the period of inactivity between 15 May 2014 and 4 November 2014, during which the trial court did not take any steps, and the five months taken to dismiss the objection lodged by the applicant on 26 May 2015, amounting to a total of eleven months and thirteen days, rendered the duration excessive. The period of inactivity for which a violation was found in this case appears to be shorter than the periods for which such violations are usually found in the Court's case-law. In *Satakunnan Markkinapörssi Oy and Satamedia Oy* (cited above, §§ 210-11), the Court found that a period of a year and a half during which the proceedings were pending for each stage was not excessive as such. In *Pélissier and Sassi v. France* ([GC], no. 25444/94, §§ 73-74, ECHR 1999-II), the Court found a violation of Article 6 § 1 as a result of a period of inactivity of more than five years in total, despite the fact that the case was not complex and that the applicants' conduct had been reasonable. In *Ezeoke v. the United Kingdom* (no. 61280/21, §§ 45-49, 25 February 2025), the Court found a violation of Article 6 § 1 by reason *both* of the lapse of one year of inactivity between the application for permission to appeal and its refusal *and* of the lack of application of "exceptional arrangements" to ensure that the trial proceeded quickly despite the Covid-19 pandemic.

In sum, both the overall length of proceedings and the period of inactivity in this case appear to be shorter than the periods accepted in the Court's case-law as compatible with the right to be tried within a reasonable time. By finding a violation of Article 6 § 1 in this case on account of a shorter period of inactivity of eleven months and thirteen days, without noting any other

factors relating to complexity or specific circumstances which may have contributed to this finding, the Court risks establishing an unfeasible threshold and creating an inconsistency in its case-law.