CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF KARABULUT v. TURKEY

(Application no. 56015/00)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

07/07/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karabulut v. Turkey,

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

Françoise Tulkens, *President,*
András Baka,
Rıza Türmen,
Mindia Ugrekhelidze,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 56015/00) 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 Mr Ali Karabulut ("the applicant") on 3 December 1999.

2. The applicant was represented before the Court by Mr Mahmut Nedim Eldem, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an agent for the purposes of the proceedings before the Court.

3. On 6 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1973 and is currently serving a prison sentence in Kırşehir.

A. Introduction

5. The facts of the case as presented by the applicant and the Government are based on a number of documents drawn up in the course of the domestic proceedings. The following information appears from the parties' submissions as well as from the documents submitted by them.

B. The Facts

6. On 17 February 1994 a warrant was issued for the applicant's arrest on suspicion of membership of an illegal organisation, namely the Revolutionary People's Liberation Party/Front-Revolutionary Left (*Devrimci Halkın Kurtuluşu Partisi/Cephe-Dev Sol; THKP/C-Dev Sol*). He was arrested on 14 July 1994 and taken into police custody.

7. On 17 July 1994 a police chief at the Istanbul Security Headquarters drafted a report which stated that the applicant had refused to respond to the questions put to him. This report was forwarded to the prosecutor's office at the Istanbul State Security Court. In another report prepared by the police the same day, the applicant was quoted as having stated that he would only talk to the prosecutor, but that in any event the allegations against him were baseless.

8. According to a medical report drafted on 17 July 1994 by the Istanbul Forensic Medicine Institute, the applicant had ecchymosed areas, measuring 4x2 cm and 4x7 cm, both under his armpits and on his shoulders. Another ecchymosed area, measuring 2x2 cm, was also observed on his right shoulder. The report stated that the injuries were of a nature which would prevent the applicant from working for a period of three days.

9. The same day the applicant was brought before the prosecutor at the Istanbul State Security Court, who questioned him and recorded his statement. In this statement the applicant denied having had any involvement in any illegal organisation. He also informed the prosecutor that he had refused to sign a statement prepared by the police in which the name Dev-Sol was mentioned. The applicant was brought before the duty judge, who questioned him further and ordered his pre-trial detention. Before the judge the applicant repeated his denial of any involvement with any illegal organisation.

10. On 27 July 1994 the public prosecutor at the Ankara State Security Court filed an indictment, accusing the applicant of membership of the above-mentioned illegal organisation. The prosecutor requested that the applicant be convicted and sentenced under Article 168 § 2 of the Criminal Code and section 5 of the Prevention of Terrorism Act. The prosecutor stated that the documents in the case files in respect of a number of persons who were being tried for membership of the same organisation proved that the applicant had also been a member. The prosecutor further alleged that a

handwritten autobiography belonging to the applicant, which had been submitted to the illegal organisation, proved that he was one of its members.

11. On 1 August 1994 the criminal proceedings against the applicant were joined to the ongoing trial of twenty-four persons accused of offences related to the illegal organisation. Subsequently, the trial was conducted by the Ankara State Security Court's First Chamber (hereafter "the trial court").

12. On 19 January 1995 the applicant submitted a letter to the trial court, stating that "pressure" had been exerted on him by the police to force him to accept the accusations. In his letter the applicant denied having given the organisation his autobiography, and maintained that he did not know who had given evidence against him.

13. On 21 February 1995 the applicant submitted another request to the trial court, in which he asked to be released. In his request the applicant stated that he was not the author of the handwritten autobiography. In that autobiography there was a reference to the son of an uncle; in fact he had no uncles. He maintained that a forensic examination of the autobiography would establish that he was not the author. The applicant also maintained that he did not know the person who had accused him of membership of the organisation. In any event, that person had later retracted his statement. The applicant also alleged that he had been subjected to torture while in police custody. In support of his allegation he referred to the above-mentioned medical report of 17 July 1994.

14. A total of forty-six hearings were held in the course of the applicant's trial. A number of hearings had to be postponed on account of some of the defendants' failure to comply with the summonses. A number of other hearings were postponed to enable the trial court to obtain important documents and reports. At each of these hearings the trial court decided to extend the applicant's remand in custody.

15. On 9 December 1997 the trial court, which had a military judge on its bench, convicted the applicant as charged and sentenced him to fifteen years' imprisonment in accordance with Article 168 § 2 of the Criminal Code. The prison sentence was increased by half, pursuant to section 5 of the Prevention of Terrorism Act. Consequently, the applicant was sentenced to twenty-two years and six months' imprisonment. One of the applicants' co-accused, a certain Mr E.K., was also convicted of the same offences and sentenced to ten years' imprisonment. Mr E.K.'s prison sentence was also increased by half and consequently he was sentenced to a total of fifteen years' imprisonment.

16. In finding the applicant guilty of membership of the illegal organisation, the trial court observed that the applicant's autobiography had been found in the organisation's possession. It also established that the applicant had joined the organisation with the assistance of two of the co-accused but had escaped from it with the help of another person.

17. The court's written judgment was 55 pages long.

18. The applicant appealed on 15 December 1997. On 27 April 1999 the Court of Cassation upheld the applicant's conviction. The applicant was not represented by a lawyer before the Court of Cassation.

19. The decision of the Court of Cassation was deposited with the registry of the Ankara State Security Court on 20 May 1999. A committal order was prepared on 24 March 2000, showing the time which the applicant was to spend in prison. The committal order was notified to the applicant on 30 March 2000 by the prison administration.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. Section 168 of the above Code provided:

> "Any person who, with the intention of committing the offences defined in sections 125, 131, 146, 147, 149 or 156, forms an armed gang or organisation or takes leadership ... or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years' imprisonment.
>
> The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment."

21. Pursuant to section 5 of the Prevention of Terrorism Act (no. 3713), the penalties laid down in the Criminal Code as punishment for the offences defined in sections 3 and 4 of the Act were increased by one half.

22. Pursuant to Article 153 of the Code of Criminal Procedure, the prosecutor and the police had a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure.

23. Article 33 of the Code of Criminal Procedure stipulated that the judgments and decisions of courts were to be served on the parties to the case.

24. Article 19 of Law no. 7201 on notifications (*Tebligat Kanunu*) provided as follows:

> "Notifications to detainees or convicted persons serving a sentence of imprisonment are made by the director or other officer of the establishment in which they are held."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that, while he was detained in police custody between 14 and 17 July 1994, he had been subjected to ill-treatment

amounting to torture within the meaning of Article 3 of the Convention. In support of this allegation the applicant referred to the above-mentioned medical report of 17 July 1994. Article 3 of the Convention provides as follows:

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

26. The Government argued that the applicant had failed to exhaust domestic remedies in relation to his allegations of ill-treatment. In particular, they submitted that the applicant had failed to bring the allegations to the attention of the prosecutor and the duty judge on 17 July 1994.

27. The applicant maintained that both the prosecutor and the trial court had been aware of the existence of the medical report detailing his injuries. These authorities were thus under an obligation to instigate *ex officio* an investigation into his allegations as required by the domestic legislation. In support of his submissions the applicant referred to the judgment in the case of *Aksoy v. Turkey* (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 56) in which the Court considered the following:

> "...even if it were accepted that the applicant made no complaint to the public prosecutor of ill-treatment in police custody, the injuries he had sustained must have been clearly visible during their meeting. However, the prosecutor chose to make no enquiry as to the nature, extent and cause of these injuries, despite the fact that in Turkish law he was under a duty to investigate".

28. The Court observes, as the Government did in their observations, that the applicant did not complain that he had been ill-treated when he was brought before the prosecutor and the judge on his release from police custody. However, in his request of 21 February 1995 which was submitted to the trial court, he made this allegation.

29. The Court observes that a public prosecutor who is informed by any means whatsoever of a situation which gives rise to a suspicion that an offence has been committed is obliged, under Article 153 of the Code of Criminal Procedure, to investigate the facts by conducting the necessary inquiries to identify the perpetrators. The Court is therefore prepared to accept that the applicant did avail himself of a domestic remedy by submitting his allegations of ill-treatment to the trial court.

30. Nevertheless, the Court notes that the applicant did not pursue his allegations of ill-treatment in the course of the trial, nor did he mention them in his appeal submitted to the Court of Cassation.

31. In the light of the above, the Court considers that the failure of the judicial authorities to investigate his allegations of ill-treatment must have become gradually apparent to the applicant by 9 December 1997, which was the date on which the trial court rendered its judgment on the matter. Therefore the applicant should have been aware of the ineffectiveness of the

remedies in domestic law by that date. Accordingly, the six-month period prescribed by Article 35 § 1 of the Convention should be considered to have started running not later than 9 December 1997 (see *İçöz v. Turkey*, (dec.), no. 54919/00, 9 January 2003, and, *mutatis mutandis*, *Veznedaroğlu v. Turkey* (dec.), no. 32357/96, 7 September 1999). On that account, his application should have been introduced no later than June 1998, whereas it was not lodged until 3 December 1999.

32. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. The applicant complained that his detention had exceeded the "reasonable time" requirement as provided in Article 5 § 3 of the Convention, which reads, in so far as relevant, as follows:

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

34. The Court reiterates that, if an applicant has been detained pending trial under Article 5 § 3, that form of custody ends on the day on which the charge is determined, even if only by a court of first instance (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 23 § 9). In the present case the applicant was convicted on 9 December 1997, thereby ending his pre-trial detention. However, he did not lodge his application with the Court until 3 December 1999. He therefore failed to observe the six-month rule laid down in Article 35 § 1 of the Convention. Accordingly, this aspect of the case must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant complained that he had not received a fair hearing by an independent and impartial tribunal on account of the presence of the military judge sitting on the bench of the trial court. He also complained that the length of the criminal proceedings against him had been in breach of the reasonable time requirement of Article 6 § 1 of the Convention. Finally, he claimed that the domestic court had convicted him on the basis of a false document and the statements of his co-accused, despite the fact that he had never accepted the accusations against him. The relevant part of Article 6 § 1 of the Convention provides as follows:

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

A. Admissibility

36. The Government argued that the applicant had failed to comply with the six-month time-limit. The applicant's conviction had been upheld by the Court of Cassation on 27 April 1999 and the Court of Cassation's decision had been deposited with the registry of the Ankara State Security Court on 20 May 1999. Nevertheless, the application was not lodged until 3 December 1999, more than six months later.

37. The applicant maintained that he had complied with the six-month rule.

38. The Court reiterates that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, judgment of 29 August 1997, *Reports* 1997-V, p. 1547, § 33). The Court notes that, by virtue of Law no. 7201 on notifications, the prison administration is responsible for informing detainees of the outcome of their cases, particularly the final determination of any sentence of imprisonment (paragraph 24 above). Consequently, in the light of its case-law (e.g. *Töre v Turkey*, no. 50744/99, final decision of 10 June 2004), the Court finds that the aim of Article 35 § 1 of the Convention is met by calculating the running of the six month period from the date on which the applicant was provided with the relevant information, namely the date on which he received the committal order – 30 March 2000 – and thereby the result of the Court of cassation procedure. As the application was lodged before this date, on 3 December 1999, the Court dismisses the Government's objection under this head.

39. As for the complaint concerning the length of the criminal proceedings, the Court observes that the period to be taken into consideration began on 14 July 1994, when the applicant was arrested and taken into police custody, and ended on 27 April 1999, when the Court of Cassation upheld the judgment of the Ankara State Security Court. The period under consideration thus lasted four years, nine months and thirteen days before two instances.

40. The Government submitted that a total of twenty-four defendants were being tried in the proceedings. The trial court had held a total of forty-six hearings. The charges against the defendants concerned the membership of an illegal armed organisation and, as such, the subject matter of the proceedings was complicated and required an examination of complex questions of fact and law. There had not been any period of inactivity

attributable to the domestic authorities. In the light of the foregoing the Government maintained that the length of the proceedings could not be considered unreasonable.

41. The applicant maintained that there had been no justification for the trial court to hold forty-six hearings. Furthermore, the inadequate initial investigation had also contributed to the length of the trial. Finally, the Court of Cassation proceedings alone had taken longer than one and a half years.

42. The Court reiterates at the outset 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 criteria established in its case-law, particularly the complexity of the case, as well as the conduct of the applicant and that of the relevant authorities (see, *inter alia*, *Kiper v. Turkey*, no. 44785/98, § 36, 23 May 2006).

43. The Court considers that the subject matter of the case before the Ankara State Security Court was undoubtedly complex, as shown, *inter alia*, by the number of investigations which were linked to each other, the number of defendants and the nature of the offences with which they were charged. The judgment adopted by the trial court was 55 pages long.

44. As regards the conduct of the applicant, the Court observes that it does not appear that he contributed to the prolongation of the proceedings. The Government have not argued to the contrary.

45. As to the conduct of the domestic authorities, the Court does not observe any period of inactivity which could be attributed to the domestic courts during the conduct of the proceedings. It is true that a number of hearings in the case were adjourned since some of the accused failed to comply with the summonses. By contrast, there is nothing in the case file which shows that the adjournments were due to the trial court's failure to organise the proceedings efficiently. The trial court adjourned the hearings in the interests of the proper administration of justice as it could not have rendered a judgment without obtaining all the defendants' submissions. Furthermore, hearings were scheduled at regular monthly intervals.

46. Having regard to the particular circumstances of the case, and taking into account the overall duration of the proceedings, the Court concludes that there has been compliance with the "reasonable time" requirement of Article 6 § 1 of the Convention (see *Mehmet Yavuz v. Turkey*, no. 47043/99, §§ 46-58, 24 July 2007 and the cases cited therein).

47. It follows that the complaint concerning the length of the criminal proceedings is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must, therefore, be declared inadmissible pursuant to Article 35 § 4.

48. As to the complaint concerning the independence and impartiality of the Ankara State Security Court which convicted the applicant, and the

complaint concerning the applicant's conviction on the basis of a false document and the statements of other co-accused, in the light of its established case-law (see, among many other authorities, *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII) and in view of the materials submitted to it, the Court considers that they raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

B. Merits

1. Independence and impartiality of the Ankara State Security Court

49. The Court has examined a large number of cases raising similar issues to those in the present case and found a violation of Article 6 § 1 of the Convention on account of the presence of a military judge on the bench of the State Security Courts (see, *inter alia*, *Çıraklar*, cited above, §§ 37-41; see also *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

50. The Court finds no reason to reach a different conclusion in the instant case. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

2. Fairness of the proceedings

51. The applicant claimed that the trial court had convicted him on the basis of a false document and on the basis of statements made by his co-accused, despite the fact that he had never accepted the accusations against him.

52. Having regard to its finding of a violation of the applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine separately the other complaint under Article 6 of the Convention relating to the fairness of the proceedings before it (see, among other authorities, *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1573, § 74).

IV. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

53. The applicant complained of a violation of Article 7 of the Convention on account of the fact that one of his co-accused, Mr E.K., who had also been convicted under the same provisions, had received a lighter

sentence. The relevant part of Article 7 of the Convention provides as follows:

> "1. ... Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. ..."

54. The Court observes at the outset that Mr E.K., who was also sentenced under the same provisions, was sentenced to fifteen years' imprisonment whereas the applicant was sentenced to twenty-two years and six months' imprisonment.

55. However, the relevant part of Article 7 of the Convention is not concerned with differences in sentencing, a matter of judicial discretion in the light of the circumstances of each individual's case within the bounds of the domestic law, but requires that no heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. In this connection, it is to be observed that Article 168 § 2 of the Criminal Code was in force at the time of the commission of the offence for which the applicant was convicted and envisaged such penalties. Indeed, the applicant did not argue to the contrary.

56. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention, and should be rejected pursuant to Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 87,569 euros (EUR) in respect of pecuniary and non-pecuniary damage.

59. The Government submitted that the applicant's claim was unsubstantiated and that the amount claimed excessive.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It is also of the view that the finding of a violation of Article 6 § 1 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Çıraklar*, cited above, § 45).

61. Nevertheless, the Court considers that where an individual, as in the instant case, has been convicted by a court which did not meet the

Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represents in principle, an appropriate way of redressing the violation (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

B. Costs and expenses

62. The applicant claimed EUR 18,383 for the costs and expenses incurred before the Court. In support of his claim he relied on the Ankara Bar Association's recommended scale of fees and submitted a time sheet showing the amount of time spent by his lawyer in representing him before the Court.

63. The Government maintained that the claim was unsubstantiated and excessive.

64. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 1,000 under this head.

C. Default interest

65. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's right to a fair hearing by an independent and impartial tribunal admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the lack of independence and impartiality of the Ankara State Security Court;

3. *Holds* that it is unnecessary to examine separately the remaining complaints under Article 6 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant;

5. *Holds*

(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, EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into new Turkish liras at the rate applicable at the date of the settlement and free of any taxes or charges that may be payable;

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President