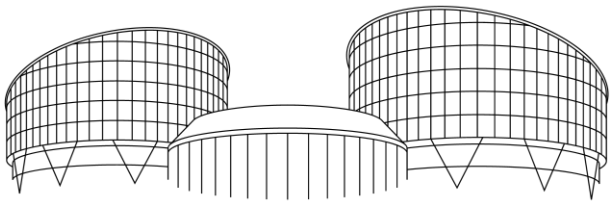

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MUSA KARATAŞ v. TURKEY

(Application no. 63315/00)

JUDGMENT

STRASBOURG

5 January 2010

FINAL

05/04/2010

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 Musa Karataş v. Turkey,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Işıl Karakaş, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 63315/00) 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 a Turkish national, Mr Musa Karataş ("the applicant"), on 25 September 2000.

2. The applicant, who had been granted legal aid, was represented by Mr Özcan Kılıç, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. The applicant alleged, in particular, that he had been ill-treated in police custody and that he had been convicted on the basis of statements extracted from him while being ill-treated and in the absence of his legal representative. He invoked Articles 1, 3, 6 and 13 of the Convention.

4. On 8 April 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

5. The applicant was born in 1956 and is currently serving a life sentence in Kocaeli prison.

A. Introduction

6. The facts of the case are disputed between the parties. The facts as presented by the applicant are set out in section B below (see paragraphs 7-13). The Government's submissions concerning the facts are summarised in section C below (see paragraphs 14-17). Documentary evidence submitted by the parties is summarised in section D below (see paragraphs 18-48).

B. The applicant's submissions on the facts

7. On 24 October 1997 the applicant, his wife, their 11-year old son, the applicant's brother and the latter's partner and a female friend were arrested on suspicion of membership of an illegal organisation, namely Türkiye Komünist Emek Partisi/Leninist (the Communist Labour Party of Turkey/Leninist, ("the TKEP-L")). They were taken into custody at the anti-terrorist branch of the Istanbul police headquarters. The applicant was allegedly subjected to ill-treatment amounting to torture while in police custody and was coerced into signing statements.

8. On 27 October 1997 the applicant was taken to a doctor. The doctor observed that both of the applicant's wrists were swollen, that the functioning of his right wrist was restricted and that the left wrist was sensitive.

9. On 31 October 1997 the applicant and the other detainees were brought before the public prosecutor at the Istanbul State Security Court. The applicant denied the veracity of the statements that had been taken from him by the police. He further alleged that he had been subjected to torture, and gave a detailed account of the treatment he had suffered. He also requested the public prosecutor to initiate an investigation against the police officers who had ill-treated him.

10. On the same day, the applicant was examined by a forensic expert who observed that the applicant's wrists and fingers were unable to perform certain movements.

11. The prosecutor's office at the Istanbul State Security Court asked for an investigation to be carried out into the applicant's allegations of ill-treatment. On an unspecified date, the Fatih public prosecutor instigated an investigation against the police officers working at the anti-terrorist branch of the Istanbul police headquarters. This investigation was concluded by a decision taken by the prosecutor on 3 February 1998 not to prosecute the police officers for want of sufficient evidence. The objection lodged by the applicant against that decision was rejected by the Beyoğlu Assize Court on 17 May 2000.

12. On an unspecified date the applicant was transferred to Kandıra prison. During that transfer he was allegedly subjected to ill-treatment by military officers.

13. On 16 February 2001 the applicant's lawyer visited him in Kandıra prison. The prison authorities prevented the lawyer from giving the applicant a number of documents concerning the applicant's appeal because the lawyer had refused to submit those documents to the authorities for inspection first.

C. The Government's submissions on the facts

14. The applicant was arrested by police officers on 24 October 1997 in the course of an investigation into the activities of the TKEP/L. He was placed in police custody at the anti-terrorist branch of the Diyarbakır (*sic*) police headquarters. It was established that the applicant was the Secretary General of the TKEP/L.

15. On 25 October 1997 the prosecutor at the Istanbul State Security Court authorised the applicant's detention in custody until 28 October 1997. On 28 October 1997, a judge at the Istanbul Security Court extended the applicant's detention until 31 October 1997.

16. The applicant was examined by a doctor on 27 October 1997 at the Haseki hospital. On 31 October 1997 he was examined once more at the Forensic Medicine Institute.

17. On 29 October 1997 a statement was taken from the applicant by the police. On 19 April 2000 the applicant was sentenced to life imprisonment by the Istanbul State Security Court. His conviction was upheld by the Court of Cassation on 19 May 2001.

D. Documentary evidence submitted by the parties

18. The following information appears from the documents submitted by the parties.

1. The applicant's arrest and detention

19. According to an arrest report drawn up on 24 October 1997, police officers at the anti-terrorist branch of the Istanbul police headquarters established, on the basis of intelligence reports, the address in Istanbul's Moda district where the applicant – who was wanted by the authorities – had been living. When a number of police officers went to the address, they saw a man leaving the building in which the applicant's apartment was situated. The police officers approached the man and asked to see his identification card. Upon this, the man started to run away but was caught by six police officers after "a chase and a scuffle". When the man refused to

get into the police car, the police officers "used force to make him get into the vehicle". An identification card, in the name of Sedat Kılıç, was found on the man.

20. The police officers took the man to the police headquarters where he was questioned. It was established that the arrested man was in fact the applicant and the identity card in the name of Sedat Kılıç had been forged. Two keys were found in his pockets. The applicant claimed that the keys were for the door of an apartment which he shared with a certain N.P., a female. The police then took the applicant to that apartment where they found, *inter alia*, a pistol and bullets, a canister of CS gas, a number of left-wing magazines, books and 400 US dollars.

21. According to a forensic medical report drawn up by a doctor at the emergency department of the Haseki hospital in Istanbul on 27 October 1997, the doctor observed the following:

> "A swelling on the right wrist and restraint of the functioning of the right wrist, as well as a slight swelling and sensitivity of the left wrist ..."

22. On 29 October 1997 a twelve-page statement was taken from the applicant – who was still in police detention – by two police officers. No lawyer was present during the questioning. In this statement the applicant said, *inter alia*, that he was the secretary general of TKEP/L.

23. On 30 October 1997 statements were taken from the applicant, the applicant's brother, the latter's partner, and a certain M.A.A., also without a lawyer being present. These statements were taken in the course of a confrontation during which all of the above-mentioned persons were present in the same room in the police station. The applicant stated that "he was the leader of the illegal armed organisation TKEP/L" and that "M.A.A., his brother and his brother's partner were also members of that organisation". The applicant's brother and M.A.A. stated that the applicant was the leader of TKEP/L. The same day the applicant was shown a number of photographs of persons who, the applicant stated, were also members of TKEP/L.

24. At the end of his police custody on 31 October 1997 the applicant was transferred to the prosecutor's office at the Istanbul State Security Court. A report, prepared by the police and setting out the information obtained in the course of the police investigation, was also forwarded to the prosecutor. It appears from this report that the applicant's wife and a female with the name of N.P. had also been taken into custody on 24 October 1997. Six other persons, including the applicant's brother, had been detained on 26 October 1997.

25. A statement was taken from the applicant by the prosecutor at the State Security Court the same day. The applicant, who was not represented by a lawyer, stated, *inter alia*, that he had not made the statements in police custody of his own free will. He had been subjected to ill-treatment which

included being suspended by his arms. The police officers had also squeezed his testicles and sworn at him. The applicant further submitted that it was true that he had been a member of TKEP/L, but he had never been the leader of TKEP/L. Although he had taken part in a number of activities within TKEP/L, none of those activities had involved violence or arms. The items found in the course of the investigation, including the pistol, were his – the other suspects had nothing to do with them. The applicant also asked the prosecutor to prosecute the police officers responsible for the ill-treatment.

26. Another statement was taken from the applicant on the same day by the duty judge at the State Security Court in the course of which the applicant was not represented by a lawyer. The applicant stated that the contents of his statements made before the prosecutor earlier that day had been correct. He denied the accuracy of the contents of the twelve-page statement taken from him on 29 October 1997 in police custody in so far as they contradicted his statement given before the prosecutor. He confirmed that he had seen his brother, his brother's partner and M.A.A. in police custody, but stated that he had told the police officers that he did not know any of the persons whose photographs were being shown to him.

27. The applicant's brother and the remaining detainees, who were also questioned by the duty judge the same day, all denied being members of any illegal organisation.

28. The duty judge ordered the applicant's detention in prison, pending the introduction of criminal proceedings.

29. Also on 31 October 1997 the applicant and eight other persons were examined at the Forensic Medicine Institute in Istanbul and a medical report was prepared. According to the report, the applicant complained of “a loss of flexibility in his right wrist, a loss of function of the fingers of his right hand and pins and needles and numbness on the outside of his left hand”. The report also states that “... it appears from the report prepared by the Haseki hospital that the [applicant] had been unable to perform certain hand and wrist movements”. There was no “orthopaedic pathology”. According to this report, two of the applicant's co-accused, including M.A.A., complained of pain in their testicles.

2. The investigation into the applicant's complaints of ill-treatment

30. On an unspecified date the prosecutor's office sent a letter to the prosecutor's office in the Fatih district of Istanbul and asked for “the necessary action to be taken” in relation to the applicant's complaints of ill-treatment. Copies of the two medical reports referred to above (see paragraphs 21 and 29 above), together with the statement taken from the applicant in which he complained of ill-treatment (see paragraph 25 above), were also appended to the prosecutor's letter. This letter was received by the Fatih prosecutor on 12 December 1997.

31. On 16 December 1997 the Fatih prosecutor asked the anti-terrorist branch of the Istanbul police headquarters to identify the police officers who had questioned the applicant in police custody.

32. On 13 January 1998 the Fatih prosecutor questioned police officers H.Y. and K.Ç. Officer H.Y. accepted that he had participated in the questioning of the applicant, but denied ill-treating him.

33. Officer K.Ç. stated that he had been present when the applicant was arrested. According to him, the applicant had resisted arrest and a number of police officers had to tackle him to the ground before they were able to control him. Upon being handcuffed and put into the police car, the applicant had attempted to take the handcuffs off and to set himself free. The applicant had not been ill-treated in custody. He had made a number of statements of his own free will and had not denied his involvement in the organisation. Officer K.Ç. further stated that there were no orthopaedic findings in the medical reports.

34. On 3 February 1998 the Fatih prosecutor decided not to prosecute anyone in relation to the applicant's allegations of ill-treatment. In the opinion of the Fatih prosecutor, other than the applicant's own "abstract allegations", there was no proof to justify the instigation of a prosecution. On an unspecified date the applicant lodged an objection against the prosecutor's decision not to prosecute.

35. On 17 May 2000 the Beyoğlu Assize Court dismissed the applicant's objection. The decision of the Assize Court reads as follows: "Having regard to the contents of the report pertaining to the complainant's medical examination, the defence arguments of the suspects, and the prosecutor's reasoning in his decision not to prosecute, [it is hereby decided] to dismiss the objection."

3. The applicant's trial and conviction

36. In the meantime, on 3 December 1997, the prosecutor at the Istanbul State Security Court filed a bill of indictment and charged the applicant with the offence defined in Article 146 § 1 of the Criminal Code, which was in force at the time and which carried the death penalty. The prosecutor alleged that the applicant was the Secretary General of TKEP/L whose object was to undermine the constitutional order, an offence within the meaning of Article 146 of the Criminal Code. The prosecutor further stated that, although the applicant had accepted in the statements made in police custody that he had been the leader of TKEP/L, he had denied it when he was brought before the prosecutor but had accepted that he was a member of TKEP/L. Nevertheless, in the opinion of the prosecutor, the statement taken from M.A.A. in police custody proved that the applicant had been the Secretary General of TKEP/L. The prosecutor observed in his indictment that when brought before the prosecutor and the judge, M.A.A. had denied the accuracy of that statement.

37. Throughout the hearings before the Istanbul State Security Court (hereinafter "the trial court"), the applicant denied the veracity of the allegation that he had been the leader of TKEP/L; although he had been a member of the organisation, he had not had decision-making authority. The applicant also maintained that he had been subjected to torture in police custody. Given that the accuracy of those statements had repeatedly been denied by him, it was unacceptable to use them against him as they had no probative value.

38. The applicant's brother informed the trial court that the contents of the statement he had made in police custody in the course of the confrontation (see paragraph 23 above) were not true.

39. In the course of one of the hearings M.A.A. informed the trial court that the contents of the statements he had made in the course of his police custody were not true and he did not know any of the defendants present in the court room. According to verbatim records of this hearing the applicant was present in the courtroom when M.A.A. made that statement.

40. Also in the course of the trial, the applicant confirmed that he had resisted arrest and that there had been a scuffle with the police officers who had threatened him with their weapons. Although he had done all that he could to resist the attempts of the police officers, he had been overpowered.

41. On 12 May 1999 the prosecutor submitted his final observations on the merits of the case against the applicant to the trial court. The prosecutor stated that a certain T.T., who was being tried in another case on the grounds that he was the leader of the TKEP, had submitted that the applicant had been a member of TKEP but had left and founded the TKEP/L. In the opinion of the prosecutor, the statement made by T.T. corroborated the statement made by the applicant in police custody.

42. On 16 July 1999 the applicant's lawyer requested the trial court to broaden the scope of the investigation. He submitted that the statements made by the applicant and his co-defendants in police custody did not have evidential value in Turkish law. In any event, most of those co-defendants had later retracted their statements. He asked the trial court to summon all those persons who had given evidence against his client so that they could be heard and questioned.

43. On the same day the trial court declined the applicant's request to widen the scope of the investigation because "it had already examined those requests and the relevant documents had already been put in the file. The other requests made by the [applicant] would not shed new light on the case".

44. In another set of written defence petitions submitted to the trial court on 24 January 2000 the applicant's lawyer argued that that while, on the basis of the evidence in the file, the applicant might conceivably be charged with membership of an armed organisation, that is the offence defined in Article 168 § 2 of the Criminal Code, there was no material or legal basis

for accusing his client of the offence defined in Article 146 § 1 of the Criminal Code. The statements made in the course of another trial in which his client was implicated could not be relied on in evidence. The lawyer repeated his requests of 16 July 1999 and asked the trial court to reconsider its decision not to summon those witnesses.

45. On 19 April 2000 the trial court convicted the applicant as charged. In convicting the applicant, the trial court relied on the statements made by the applicant and his co-defendants in police custody. According to the trial court, the statements made by the applicant in police custody had been "precise and accurate". The statements made by the applicant before the prosecutor and the duty judge after his release from police station, that is the statements in which the applicant accepted being a member of TKEP/L but denied being its leader, on the other hand, were regarded by the trial court as "insincere". In the opinion of the trial court, when the statements made by the applicant and his co-defendants in police custody were examined together with the statements made by persons accused of membership of the same organisation, it became evident that the applicant had been the leader of TKEP/L. On that premise, the trial court considered it appropriate to hold the applicant responsible for all the activities carried out by TKEP/L. Noting that TKEP/L was an organisation involved in activities aimed at replacing the prevailing system, through violence, with that of a proletarian dictatorship based on Marxist-Leninist principles, the trial court decided that the applicant was guilty of the offence defined in Article 146 § 1 of the Criminal Code and sentenced him to death. This sentence was commuted to life imprisonment.

46. The trial court acquitted six of the seven co-defendants on grounds of lack of evidence. It observed that, although these co-defendants had made statements in police custody in which they accepted being members of TKEP/L, they had later denied the accuracy of those statements.

47. On 21 February 2001 the applicant appealed against the judgment of the trial court and argued that the principle of equality of arms had been breached on account of the trial court's refusal to widen the scope of the investigation.

48. On 19 March 2001, after a hearing, the Court of Cassation upheld the trial court's judgment in so far as it concerned the applicant and quashed the acquittals of the six co-defendants on the ground of the trial court's failure to collect further evidence against them by failing to summon a number of defendants who were being tried in other cases.

II. THE RELEVANT DOMESTIC LAW APPLICABLE AT THE TIME

49. Article 146 § 1 of the Criminal Code which was in force at the time of the events provided as follows:

"Whosoever shall attempt to alter or amend in whole or in part the Constitution of the Turkish Republic or to effect a *coup d'état* against the Grand National Assembly formed under the Constitution or to prevent it by force from carrying out its functions shall be liable to the death penalty."

50. Article 168 § 2 of the Criminal Code provided:

"1. It shall be an offence punishable by at least fifteen years' imprisonment to form an armed gang or organisation or to assume control or special responsibility within such a gang or organisation with the intention of committing any of the offences referred to in Article 125.

2. It shall be an offence punishable by five to fifteen years' imprisonment to belong to such an organisation."

51. Under the Criminal Code it was an offence for a government employee to subject a person to torture or ill-treatment (Article 243 in relation to torture and Article 245 in relation to ill-treatment). A public prosecutor who was informed by whatever means of a situation that gave rise to the suspicion that an offence had been committed was under a duty to investigate the facts in order to decide whether or not there should be a prosecution (Article 153 of the Criminal Procedure).

52. According to the principles established by the Turkish criminal courts, the questioning of a suspect is a means of enabling him to defend himself that should work to his advantage, and not a measure designed to obtain evidence against him. While statements made during questioning may be taken into consideration by the judge in his assessment of the facts of a case, they must nonetheless have been made voluntarily, and statements obtained through use of pressure or force are not admissible in evidence (see *Dikme v. Turkey*, no. 20869/92, § 38, ECHR 2000-VIII).

53. Furthermore, according to Article 247 of the Code of Criminal Procedure in force at the time of the events, as interpreted by the Court of Cassation, any confessions made to the police or the public prosecutor's office must be repeated before the judge if the record of the questioning containing them is to be admissible as evidence for the prosecution. If the confessions are not repeated, the records in question are not allowed to be read out as evidence in court and consequently cannot be relied on to support a conviction. Nevertheless, even a confession repeated in court cannot on its own be regarded as a decisive piece of evidence unless supported by additional evidence (*ibid*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF THE CONVENTION

54. The applicant complained that the respondent Government had failed to secure him the rights and freedoms defined in the Convention as provided in Article 1 of the Convention, which reads as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

55. The Government contested that argument.

56. The Court reiterates that Article 1 contains an entirely general obligation and that it should not be seen as a provision which can be the subject of a separate breach, even if invoked at the same time and in conjunction with other Articles (*Doğan and Others v. Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 120, ECHR 2004-VI (extracts) and the cases cited therein). It thus considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

57. The applicant complained that while in the custody of the police he was subjected to ill-treatment amounting to torture within the meaning of Article 3 of the Convention. Under the same Article he also alleged that he had been ill-treated in the course of his transfer to prison. Invoking Article 13 of the Convention the applicant complained that the authorities had failed to carry out an effective investigation into his allegations of ill-treatment and had thus deprived him of an effective remedy.

58. The Court considers that these complaints should be examined solely from the standpoint of Article 3 of the Convention, which reads as follows:

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

59. The Government argued that the applicant's complaint should be declared inadmissible on account of his failure to exhaust a number of civil and administrative remedies.

60. Furthermore, the Government denied that the applicant had been ill-treated. There was no indication in the medical reports that ill-treatment had taken place. According to the Government, the injuries found on the applicant's wrists had been caused in the course of his resisting arrest. In this connection, the Government referred to the arrest report of 24 October 1997 and submitted that the police officers had to pursue the applicant who

was trying to escape, and force him into the police car. The Government also drew the Court's attention to the fact that, in the course of the trial, the applicant had accepted that he had resisted arrest and had been involved in a physical struggle with the police officers.

61. The applicant stated that he had complied with the obligation to exhaust domestic remedies by exhausting the criminal remedies in relation to his complaint of ill-treatment. Had the investigation by the prosecutor been carried out adequately, the circumstances surrounding the ill-treatment would have been clarified. The civil and administrative remedies referred to by the Government, on the other hand, did not represent effective remedies in relation to his complaint of ill-treatment.

62. The applicant further submitted that his allegations of ill-treatment were supported by medical evidence. He had brought his allegations to the attention of the judicial authorities from the moment of his release from police custody, and had continued to raise them in the course of the trial. In the applicant's opinion, the Government's submission that his injuries had been caused in the course of the arrest as a result of his resistance was baseless as it was not true that he had resisted arrest.

63. The Court does not deem it necessary to determine whether the applicant has complied with the obligation to exhaust domestic remedies in respect of his complaint under Article 3 of the Convention, since it considers that the complaint is in any event manifestly ill-founded for the following reasons and must be declared inadmissible.

64. The Court reiterates that, according to its well-established case-law, where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-111, Series A no. 241-A). Furthermore, the Court has repeatedly held that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see, *inter alia*, *Mathew v. the Netherlands*, no. 24919/03, § 177, ECHR 2005-IX, and the cases cited therein).

65. Although the applicant in the present application had not yet been taken into police custody at the police station when, according to the Government, his injuries were caused, he was nevertheless in the hands and under the supervision of the police officers from the moment of his apprehension. In the light of the foregoing, the Court considers that the applicant's apprehension amounted to his being in the custody of the State (see, *mutatis mutandis*, *Yasin Ateş v. Turkey*, no. 30949/96, § 140, 31 May 2005). It follows that the burden of providing a plausible explanation for the applicant's injuries lies with the Government.

66. According to the medical report of 27 October 1997, the applicant's wrists were swollen and the functioning of his wrists was restricted (see paragraph 21 above). Furthermore, it appears from the medical report of 31 October 1997 that the applicant had complained of "a loss of flexibility in his right wrist, a loss of function of the fingers of his right hand and pins and needles and numbness on the outside of his left hand" (see paragraph 29 above). No other injuries are mentioned in the medical reports.

67. In order to explain the injuries to the applicant's wrists, the Government argued that they had been caused when the applicant resisted arrest. In support of their explanation the Government referred to the arrest report (see paragraph 19 above) and the applicant's own statement made in the course of the trial (see paragraph 40 above) from which it appears that the applicant had resisted arrest by physical means and had also been in a scuffle with the police officers when they were handcuffing him and putting him into the car. The Court further notes that the statement taken from one of the arresting police officers also supports this version of the events. According to that statement, a number of police officers had to tackle the applicant to the ground before being able to control him; even after having been handcuffed and put into the police car, the applicant had attempted to take the handcuffs off and free himself (see paragraph 33 above).

68. The Court observes that the injuries mentioned in the medical reports are consistent with the above mentioned version of the events. In this connection the Court also notes that, other than alleging that he had been subjected to torture, the applicant has not provided the Court with precise information about the alleged ill-treatment in his application form or in his observations. As regards the allegations made by the applicant when he was brought before the prosecutor at the State Security Court on 31 October 1997, that is, that he had been suspended by his arms and that his testicles had been squeezed by the police officers (see paragraph 25 above), the Court would expect that being suspended by the arms would have left visible signs of injury. Nevertheless, neither of the medical reports mentions any injuries that might have been caused by this kind of ill-treatment. Furthermore, unlike two of his co-accused, the applicant did not mention to the doctor that he had pain in his testicles (see paragraph 29 above). In this connection the Court notes that the applicant has not challenged the accuracy and veracity of the medical reports or argued that the medical records did not reflect the true extent of his complaints and injuries, or that his complaints were not recorded accurately in the medical reports.

69. In the light of the foregoing, and taking into account, in particular, the nature and the extent of the injuries mentioned in the medical reports, the Court considers plausible the Government's explanation that the applicant's injuries were caused when he resisted arrest. The Court thus concludes that recourse to the use of force by the police officers had been made strictly necessary by the applicant's own conduct.

70. As regards the applicant's allegation that he had been ill-treated in the course of his transfer to prison, the Court observes that the applicant has not submitted any documents indicating that such ill-treatment had actually taken place, or showing that he had brought a complaint to that effect to the attention of the national investigating authorities.

71. Concerning the complaint relating to the effectiveness of the investigation into the applicant's allegations of ill-treatment, the Court observes that the applicant alleged in front of the prosecutor at the State Security Court that he had been subjected to ill-treatment in police custody (see paragraph 25 above). The prosecutor forwarded the applicant's complaints and the medical reports to the Fatih prosecutor and asked for an investigation to be instigated (see paragraph 30 above).

72. The Fatih prosecutor identified the police officers who were responsible for the applicant's arrest and questioning, and summoned and questioned them directly (see paragraphs 32-33 above).

73. Taking into account the statements made by the police officers and the arrest report, the Fatih prosecutor decided not to prosecute the police officers (see paragraph 34 above). In the course of its examination of the applicant's objection against the Fatih prosecutor's decision not to prosecute, the Beyoğlu Assize Court made an assessment of the evidence and the investigation (see paragraph 35 above).

74. The Court considers that, in the circumstances of the case, and in view of the evidence in their possession, the investigating authorities took all reasonable steps and showed diligence in establishing the cause of the injuries to the applicant's wrists. Indeed, the conclusion reached by those authorities formed the basis for the Court's assessment that recourse to the use of force by the police officers had been made strictly necessary by the applicant's own conduct (see paragraph 69 above).

75. Consequently, the investigation carried out by the national authorities met the requirements of Article 3 of the Convention.

76. In the light of the foregoing, the Court considers that the applicant's complaints under Article 3 are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

77. Invoking Article 6 of the Convention the applicant complained that he had been unable to consult a lawyer while he was detained in police custody and when he was brought before the prosecutor and the judge. He also alleged that he had been convicted on the basis of statements extracted from him under ill-treatment and that he had not been afforded adequate time and facilities for the preparation of his defence as his lawyer was prevented by prison authorities from giving him a number of important documents.

78. Article 6 of the Convention, in so far as relevant, provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself ... through legal assistance of his own choosing ..."

79. The Government contested the applicant's allegations and, referring to the above-mentioned judgment in the case of *Dikme* (§ 109), argued that the manner in which Article 6 § 3 (c) was applied during the preliminary investigation depended on the special features of the proceedings involved and on the circumstances of the case. In order to determine whether the aim of Article 6 – a fair trial – has been achieved, regard must be had to the entirety of the proceedings conducted in the case.

80. They pointed out in this connection that, both throughout the criminal proceedings before the trial court and in the course of the hearing before the Court of Cassation, the applicant had been represented by a lawyer.

81. The Government further pointed to the fact that the applicant had been arrested in possession of a false identification card. A number of items, such as a pistol, two chargers, bullets and documents pertaining to TKEP/L had been found in his two apartments. The applicant had admitted to being the owner of those items and had also accepted that he was a member of that organisation.

82. Furthermore, in the course of criminal proceedings before different State Security Courts concerning the same organisation, that is, the TKEP/L, defendants had made statements implicating the applicant.

83. In the opinion of the Government, all the documents and statements in the case file of the State Security Court were coherent. Referring to the Court's case-law, the Government submitted that it was for the national courts to assess the evidence and its relevance in a criminal trial. Although Article 6 of the Convention guaranteed the right to a fair trial, it did not lay down any rules on the admissibility of evidence, which was primarily a matter for regulation under national law.

A. Admissibility

84. As regards the applicant's allegation that he was convicted on the basis of statements extracted from him while being ill-treated, the Court notes that it has not been established that the applicant was subjected to ill-treatment in police custody.

85. Concerning the applicant's submission that his lawyer was prevented by the prison authorities from giving him a number of documents concerning his appeal, the Court notes that the applicant has not supported this allegation with any evidence.

86. It follows that these complaints under Article 6 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

87. Concerning the applicant's complaint under Article 6 § 1 of the Convention taken in conjunction with 6 § 3 (c), that is, that he had not had access to a lawyer in police custody and when brought before the prosecutor and the judge, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

88. The Court observes that the applicant was questioned on three occasions by police officers while being held in police custody for a period of seven days, from 24 October 1997 to 31 October 1997. At the end of his police custody the applicant was further questioned by a public prosecutor and a judge of the State Security Court. Under the applicable law in force at the time, the applicant did not have the right to request legal representation in the course of the preliminary investigation and, as a result, when questioned by the police and then by the prosecutor and the judge, he did not receive legal assistance.

89. The Court observes that the applicant made a number of self-incriminating statements in the course of being questioned in police custody and those statements became crucial elements in the prosecutor's indictment (see paragraph 36 above) and submissions (see paragraph 41 above), and were a major contributing factor to the applicant's conviction (see paragraph 45 above).

90. The Court stresses at the outset that Article 6 may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with it (see *Salduz v. Turkey* [GC], no. 36391/02, § 50, 27 November 2008 and the cases cited therein). Furthermore, in order for the right to a fair trial to remain sufficiently “practical and effective” Article 6 § 1 requires that, as a rule,

access to a lawyer should be provided from initial questioning of a suspect by the police, unless it is demonstrated, in the light of the particular circumstances of each case, that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify the denial of access to a lawyer, such a restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 of the Convention. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (*ibid*, § 55).

91. In the present case, the applicant's conviction was based on the statements made by him in police custody – which were retracted by him at all subsequent stages of the criminal proceedings – in which he confessed, in the absence of his lawyer, to being the leader of TKEP/L. Despite the fact that, according to Article 247 of the Code of Criminal Procedure in force at the time of the events any confessions made to the police or the public prosecutor's office must be repeated before the judge if the record of the questioning containing them is to be admissible as evidence for the prosecution (see paragraph 53 above), the trial court admitted the applicant's confession in evidence, and relied on it in convicting the applicant. For the Court, that finding is in itself sufficient to conclude that there has been a breach of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1.

92. Notwithstanding that conclusion, the Court considers it appropriate to address the other infringements of the fairness requirements guaranteed by Article 6 of the Convention. It notes that the trial court considered that the applicant's confession was corroborated by two groups of evidence. The first group consisted of the statements made by the applicant's co-accused in the course of the same police custody (see paragraph 23 above), also without any lawyer being present. The second group consisted of statements made by persons in the course of trials before different criminal courts where they were being tried for the offence of membership of the parent organisation of TKEP/L, i.e. TKEP (see paragraph 45 above).

93. As regards the first group of evidence, the Court observes that the statements made by the applicant's co-accused while detained in police custody, in which they implicated both themselves and each other, were subsequently retracted by them and, as a result, the trial court considered that there was no other evidence against them and acquitted them. Nevertheless, the trial court did not take into account that same retraction when it concluded that the co-accuseds' statements corroborated the applicant's confession.

94. As regards the second group of evidence, the Court reiterates that all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. Fairness requires that the rights of the defence are respected. As a rule these rights require that the

defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he is making his statements or at a later stage of the proceedings (see, among other authorities, *Isgrò v. Italy*, 19 February 1991, § 34, Series A no. 194-A, and *Lucà v. Italy*, no. 33354/96, §§ 40-43, ECHR 2001-II). The corollary of that is that where a conviction is based solely, or to a decisive degree, on depositions that have been made by a person who the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (see, among other authorities, *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 65, ECHR 2001-VIII, and the cases cited therein).

95. The Court observes that, as acknowledged by the respondent Government, statements made by persons in different trials were used against the applicant (see paragraph 82 above). This is clear from the trial court's judgment (see paragraph 45 above). Furthermore, it is not disputed that the persons who made statements against the applicant before different criminal courts were not summoned to appear before the applicant's trial court, despite the fact that the applicant requested the trial court to summon them on at least two occasions (see paragraphs 42 and 44 above).

96. The Court considers that the shortcomings highlighted above exacerbated the consequences of the applicant's inability to consult a lawyer when making statements in police custody.

97. In the light of the foregoing, the Court concludes that the applicant's inability to consult his lawyer at the initial stages of the criminal proceedings restricted the rights of the defence to an extent that is incompatible with the guarantees provided by Article 6 of the Convention. There has, therefore, been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant argued that he had been submitted to inhuman treatment and sentenced to death at the end of an unfair trial and on the basis of statements extracted from him while being ill-treated. He claimed

30,000 euros (EUR) in respect of non-pecuniary damage on account of the pain and suffering caused as a result of his ordeal.

100. The Government contested the applicant's claim.

101. The Court, taking into account the awards made in comparable cases, and deciding on an equitable basis, awards the applicant EUR 2,000 in respect of non-pecuniary damage flowing from the violation of Article 6 § 1 of the Convention (see, in particular, *Salduz*, cited above, § 73).

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

B. Costs and expenses

103. The applicant also claimed 12,310 Turkish liras (TRY) (approximately EUR 6,000) for the costs and expenses incurred both before the domestic courts and before the Court. This sum included TRY 650 in respect of his costs and TRY 11,660 in respect of his lawyer's fees. In support of his claims the applicant submitted a schedule of the hours spent by his lawyer on the case.

104. The Government contested the applicant's claim.

105. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were 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 sum of EUR 2,000 covering costs under all heads less the amount of EUR 715 received by way of legal aid from the Council of Europe.

C. Default interest

106. 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

1. *Declares* unanimously the complaint concerning the applicant's right to defend himself through legal assistance admissible;

2. *Declares* by a majority the complaint under Article 3 of the Convention inadmissible;

3. *Declares* unanimously the remainder of the application inadmissible;

4. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (c);

5. *Holds* unanimously
   (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 Turkish liras at the rate applicable at the date of settlement:
      i. EUR 2,000 (two thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      ii. EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, less EUR 715 (seven hundred and fifteen euros) received from the Council of Europe by way of legal aid;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President