CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

**CASE OF GÜVEÇ v. TURKEY**

*(Application no. 70337/01)*

JUDGMENT

STRASBOURG

20 January 2009

**FINAL**

*20/04/2009*

*This judgment may be subject to editorial revision.*

**In the case of Güveç v. Turkey,**

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

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

# PROCEDURE

1. The case originated in an application (no. 70337/01) 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 Oktay Güveç ("the applicant"), on 9 April 2001.

2. The applicant, who had been granted legal aid, was represented by Ms Mükrime Avcı and Ms Derya Bayır, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that his detention in prison with adults and his trial before the State Security Court instead of a juvenile court had been in breach of Article 3 of the Convention. Under Articles 5 and 6 of the Convention he also complained that he had not been released pending trial and that he had not been tried fairly.

4. On 2 June 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 on 30 April 1980 and lives in Belgium.

6. On 29 September 1995 a certain Mr Özcan Atik was arrested on suspicion of membership of the PKK[1]. The following day the applicant was arrested in Istanbul upon information allegedly given to the police by Mr Atik. According to that information, the applicant was a member of the PKK. Following his arrest the applicant was placed in police custody.

7. The applicant was questioned by police officers on 5 October 1995. In a written statement prepared by the police and signed by him, the applicant was quoted as having stated that he was a member of the PKK and that he had had a number of meetings with several of its members, including Özcan Atik. One day Özcan Atik had told the applicant that he had asked a certain Menderes Koçak to provide financial assistance to the PKK but that Mr Koçak had refused. Özcan Atik had then asked the applicant to help him set fire to a vehicle owned by Mr Koçak. This they had done one evening with the help of two other persons. The applicant also added that had he not been arrested, he would have taken part in further activities on behalf of the PKK.

8. On 7 October 1995 Mr Koçak identified Mr Atik and another person as the persons who had asked him to give money to the PKK. He did not know whether it had been the same two persons who had subsequently set fire to his vehicle and shop.

9. On 9 October 1995 police officers took the applicant and three other persons, including Mr Atik, to the street where Mr Koçak's vehicle had been set on fire.

10. On 12 October 1995 the applicant and 21 other persons who had been arrested as part of the same police operation were taken to the Istanbul branch of the Forensic Medicine Institute, where they were examined by a doctor. According to the medical report drawn up the same day, the applicant's body did not bear any signs of ill-treatment.

11. The same day the applicant was taken to the Istanbul State Security Court, where he was questioned by a prosecutor and then by a judge who ordered his detention in prison pending the introduction of criminal proceedings against him. In the statement drawn up by the prosecutor the applicant was quoted as having stated that he was a sympathiser but not a member of the PKK. He had set fire to the vehicle together with three other persons. In the statement drawn up by the judge, however, the applicant was quoted as having stated that he had set fire to the vehicle on his own.

12. When questioned by the police, and subsequently by the prosecutor and the judge, the applicant was not represented by a lawyer.

13. On 27 November 1995 the prosecutor at the Istanbul State Security Court filed an indictment with that court, charging the applicant and fifteen other persons with the offence of carrying out activities for the purpose of bringing about the secession of part of the national territory. According to

[1] The Kurdistan Workers' Party, an illegal organisation.

Article 125 of the Criminal Code in force at the time, the punishment stipulated for this offence was the death penalty (see Relevant Domestic Law and Practice below).

14. A preparatory hearing was held on 18 December 1995 by the Istanbul State Security Court (hereinafter "the trial court"). One of the three judges on the bench was an army officer.

15. At the first hearing, held on 27 February 1996, the applicant was present but not represented by a lawyer.

16. During the second hearing, held on 1 March 1996, the applicant was still not represented by a lawyer but was questioned by the trial court. The applicant told the trial court that his childhood friend Özcan Atik had told him one day that he had been selling newspapers and that one of his customers had refused to pay. Mr Atik had then suggested "teaching that customer a lesson". One night the applicant and Mr Atik had arrived outside a big building. Mr Atik had poured some petrol on the street outside the building from a jerry can and set fire to it. The applicant himself had not set fire to any vehicle and he did not know Menderes Koçak.

17. The applicant also told the trial court that, while detained in police custody, he had been given electric shocks, sprayed with pressurised water and beaten with a truncheon; the soles of his feet had also been beaten. He had then signed the statements implicating him in the offences with which he was subsequently charged. As regards the statements taken from him by the prosecutor and the judge on 12 October 1995, the applicant stated that the prosecutor and the judge had only asked him his date of birth; he had not made any statements before them. The applicant also denied that the police had taken him to the place where he had allegedly set fire to a vehicle (see paragraph 9 above). The applicant's request for release was rejected by the trial court the same day.

18. During the third hearing held on 18 April 1996, a lawyer representing some of the applicant's co-accused informed the trial court that she would also be representing the applicant. During the same hearing Menderes Koçak also gave evidence as a witness and stated that Özcan Atik had never asked him to give money to the PKK. A vehicle owned by him had been set on fire but he did not think Özcan Atik had done it.

19. The applicant was subjected to a limited visiting regime in the prison and did not have the opportunity to have open visits with his family.

20. The applicant did not attend four of the subsequent six hearings held at two-monthly intervals. Requests for his release made by his lawyer were all rejected by the trial court. The lawyer argued that there was no evidence against the applicant other than that obtained under ill-treatment.

21. In the course of the 10th hearing, which was held on 29 May 1997 in the applicant's absence but with the attendance of his lawyer, the prosecutor asked the trial court to try the applicant for the offences of membership of an illegal organisation and causing damage to property, and not for the

offence with which he was charged in the indictment (see paragraph 13 above). The trial court rejected the request for the applicant's release.

22. The applicant's lawyer did not attend the 11th hearing held on 17 July 1997. During the 12th hearing, on 26 August 1997, the lawyer argued that, on account of the testimony given to the trial court by Mr Koçak on 18 April 1996 (see paragraph 18 above), there was no evidence showing that the applicant had committed the offences with which he was charged.

23. The lawyer did not attend the 13th hearing, held on 2 October 1997, because she had other business before a Labour Court. The applicant made his own defence submissions and repeated his allegations of ill-treatment in police custody. He also asked to be released. This request was rejected by the trial court.

24. On 17 October 1997 the trial court found the applicant guilty of membership of an illegal organisation and of setting fire to a motor vehicle, and sentenced him to nine years, eight months and ten days' imprisonment. The trial court considered that the statements given by the applicant in police custody and the statements given by his co-accused showed that the applicant was a member of the illegal organisation and that he had set fire to the vehicle.

25. The applicant appealed. On 12 March 1998 the Court of Cassation quashed the applicant's conviction. The case was remitted to the trial court for a retrial.

26. On 11 September 1998 the trial court held a preparatory hearing in the retrial. One of the three judges on the bench was a military officer.

27. Eight hearings were held between 27 October 1998 and 30 December 1999. The applicant's lawyer attended only one of these hearings, that on 18 March 1999, whereas the applicant attended two hearings. During the 5th hearing, held on 15 July 1999, the military judge was replaced by a civilian judge in accordance with the legislation which had entered into force in the meantime (cf. *Öcalan v. Turkey* [GC], no. 46221/99, §§ 2-54, ECHR 2005-IV).

28. On 18 November 1999 a police chief informed the trial court that, contrary to the allegations, no vehicle belonging to Menderes Koçak had been set on fire.

29. A 9th hearing was held on 21 March 2000. The applicant was present but his lawyer was not. During the hearing Menderes Koçak gave evidence before the trial court and stated that his vehicle had not been burned. No one had asked him to give money to the PKK. When asked by the trial court to explain the inconsistencies between the statement he had made to the police on 7 October 1995 (see paragraph 8 above) and his testimony, Mr Koçak stated that he had not told any such things to the police; he had had to sign whatever was written in the statement drafted by the police officers.

30. During the same hearing the applicant reiterated that he did not know Mr Koçak and had not set fire to any vehicle. He pointed out that he had been arrested at the age of 15 with no evidence against him, and asked to be released. This request was rejected by the trial court.

31. The applicant but not his lawyer attended the 10th hearing, held on 23 May 2000.

32. In the course of the 11th hearing, held on 25 July 2000 in the absence of the applicant's lawyer, the trial court was presented with a letter drafted by the applicant's cell-mates. The letter states that "[the applicant] has serious psychiatric problems. His treatment is being overseen by a psychiatric hospital in Istanbul. He is unable to live without the assistance of others and his health is deteriorating. As such, he is unable to attend the hearings and he refused to attend today's hearing. We felt the need to send you this letter because we have found out that his lawyer has not been attending the hearings".

33. According to a medical report prepared by the prison doctor on 24 July 2000 which was appended to the cell-mates' letter, the applicant had been taken to a psychiatric hospital on 2 June 2000 and returned to the prison on 11 July 2000.

34. The applicant's mother also attended this hearing and informed the trial court of the applicant's serious psychiatric problems. She asked for the applicant to be released from the prison. During the same hearing the prosecutor asked the trial court to acquit the applicant of the charge of arson (Article 516 § 7 of the Criminal Code) but to convict him of the offence of membership of an illegal organisation (Article 168 of the Criminal Code).

35. Nevertheless, the trial court ordered the applicant's continued detention in prison and referred him to a psychiatric hospital with a view to establishing whether he had the necessary criminal capacity (*doli capax*) at the time of the alleged commission of the offence.

36. On 7 August 2000 the prison doctor reported on the problems which the applicant had been suffering in prison. According to this report, the applicant had attempted suicide in June 1999 by taking an overdose. In August 1999 he had set himself on fire and suffered extensive and serious burns. He had spent three months in hospital where he was treated for his injuries. During that time in hospital he had also received medication for depression. Following his return to the prison his treatment for the burns had continued for five months. His body still bore burn marks.

37. On 2 June 2000 the applicant's psychological health had deteriorated and he was taken to hospital, where he stayed for a month and a half. His health had deteriorated even further following his return from the hospital and he was now refusing to speak to anyone.

38. The prison doctor concluded in his report that the situation in the prison was not compatible with the applicant's treatment. The applicant needed to spend a considerable time in a specialised hospital.

39. During the 12th hearing, held on 10 October 2000, Ms Mükrime Avcı, one of the applicant's legal representatives named above (see paragraph 2), submitted a power of attorney to the trial court and informed that court that she was taking over the applicant's representation. Ms Avcı argued in her written observations submitted to the trial court the same day that the applicant had only been 15 years old at the time of his arrest. Turkey was a Party to the United Nations Convention on the Rights of the Child. Article 40 § 3 of that Convention recommended that the States Parties establish procedures and institutions specifically for children charged with criminal offences. Indeed, juvenile courts existed in Turkey. However, the applicant had been charged with an offence falling within the jurisdiction of State Security Courts and, as such, the domestic law prevented him from being tried by a juvenile court. Had the applicant been tried before a juvenile court, he would not have been kept in police custody for 12 days, a lawyer would have been appointed to represent him and his case would have been concluded within a short time.

40. The lawyer added that the ill-treatment to which the applicant had been subjected in police custody, coupled with his long detention in prison, had been too much to bear for a child of his age. He had attempted to take his own life on two occasions. He was still suffering from serious psychiatric problems and he found it difficult to attend the hearings. The lawyer asked for the applicant to be released so that he could receive medical treatment.

41. The lawyer also informed the trial court that the applicant had not been taken to the hospital despite the court order of 25 July 2000 (see paragraph 35 above). The same day the trial court ordered the applicant's release from prison on bail.

42. The applicant attended the 14th hearing, held on 13 March 2001 and informed the trial court that, although he had gone to the hospital for a medical examination, the hospital authorities had refused to examine him as he had no official letter of referral. The trial court issued a new order of referral.

43. The applicant was examined at a psychiatric hospital on 25 April 2001. According to the report pertaining to that examination, other than the two instances referred to above (see paragraph 36), the applicant had made another attempt to kill himself, by slashing his wrists, in September 1998. The extensive burn marks on his arms and body were still visible. His psychological complaints had started during his detention in prison and had worsened in the course of the time he spent there. Between 2 June 2000 and 11 July 2000 he had been treated in hospital for "major depression". His psychological problems were now in remission. It was concluded in the report that the applicant had not been suffering psychological problems at the time of the commission of the offence and that his current mental state did not affect his criminal responsibility.

44. In its 16th hearing, held on 22 May 2001, the trial court acquitted the applicant of the arson charge but found him guilty of membership of an illegal organisation and sentenced him to eight years and four months' imprisonment. The trial court stated that the statements made by the applicant in police custody, and then before the prosecutor and the judge at the end of his police custody, had been decisive in reaching the conclusion that he was a member of the illegal organisation. In those statements the applicant had described the "various activities" in which he had been involved. The trial court also concluded that the applicant had been involved in the printing and distribution of illegal leaflets.

45. The applicant appealed. On 13 March 2002 the prosecutor at the Court of Cassation submitted his written observations to that court and asked for the applicant's conviction to be upheld. These observations were not communicated to the applicant or to his lawyer.

46. In her detailed appeal submissions the applicant's lawyer pointed out that the only evidence put forward by the prosecution in support of the allegation that her client was a member of the illegal organisation had been the allegation concerning the burning of a vehicle. As established by the trial court, however, no such incident had occurred and the owner of the vehicle had made no such complaint. There was no place in the Turkish legal system for abstract concepts such as "various activities" (see paragraph 44 above). For any activity to be relied on in evidence, it should have been set out clearly and supported with adequate evidence. Furthermore, the trial court's judgment was silent as to why and how it was concluded that the applicant had been involved in the printing and distribution of the illegal organisation's leaflets. The lawyer also reiterated her arguments concerning the applicant's age and her references to the United Nations Convention on the Rights of the Child (see paragraph 39 above).

47. On 20 May 2002 the Court of Cassation upheld the applicant's conviction.

48. According to the information provided to the Court by the applicant's lawyer, in 2002 the applicant left Turkey for Belgium, where he was subsequently granted refugee status.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

49. Article 125 of the Criminal Code as it stood at the material time provided that:

> "Anyone committing an act designed to subject the State or a part of the State to the domination of a foreign State, to diminish its independence or to impair its unity, or which is designed to remove from the administration of the State a part of the territory under its control shall be liable to the death penalty."

50. Article 168 of the Criminal 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."

51. Article 516 of the Criminal Code provided:

> "Any person who destroys, demolishes, spoils or damages property owned by another person shall, upon the complaint of the aggrieved person, be sentenced to not less than one and not more than three years' imprisonment..."

According to paragraph 7 of this Article, if the offence in question was carried out using inflammable or explosive material and if the property in question was a motor vehicle, the sentence to be imposed varied between three and seven years.

52. At the material time Article 30 of Law no. 3842 of 18 November 1992, amending the legislation on criminal procedure, provided that, with regard to offences within the jurisdiction of the State Security Courts, any arrested person had to be brought before a judge within forty-eight hours at the latest, or, in the case of offences committed by more than one person, within fifteen days.

53. Article 138 of the Code of Criminal Procedure as it stood at the material time stipulated that, from the time of their arrest, persons under the age of 18 should be given the assistance of an officially assigned legal representative without having to ask for it. According to Article 31 of the above-mentioned Law no. 3842, however, Article 138 was not applicable to persons accused of offences within the jurisdiction of the State Security Courts.

54. According to Article 6 § 1 of the Law on the Establishment, Duties and Procedures of Juvenile Courts (Law No. 2253 of 21 November 1979; repealed and replaced by Law No. 5395 of 15 July 2005 on the Protection of the Child), only juvenile courts had the power to try persons under the age of 15. According to the last paragraph of that Article, however, even children under the age of 15 charged with offences falling within the jurisdiction of State Security Courts were to be tried before those courts rather than before juvenile courts.

55. Article 37 of Law No. 2253 also stipulated that minors could only be detained on remand in prisons specially designed for them. In places where no such prisons existed, minors were to be kept in a part of a normal prison separate from where adults were detained. For the purposes of this Law the term "minor" means persons who were under 15 years of age at the time when the offence was committed.

56. Article 107 (b) of the Regulations on Prison Administration and Execution of Sentences (dated 5 July 1967) stipulated that detainees under the age of 18 were to be kept separately from other detainees. Under Article 106 of the same Regulations, detainees had the possibility to "inform prison governors, prosecutors and the Ministry of Justice of their complaints and requests".

57. Pursuant to the Law on the Protection of the Child, which on 15 July 2005 replaced the above-mentioned Law on the Establishment, Duties and Procedures of Juvenile Courts, persons under the age of 18 can only be tried before juvenile courts. However, if the prosecuting authorities allege that the offence with which the juvenile is charged was committed jointly with adults, the juvenile may be tried before the ordinary criminal courts together with those adults.

## III. RELEVANT INTERNATIONAL TEXTS

58. The United Nations Convention on the Rights of the Child 1989 (hereafter, "the UN Convention"), adopted by the General Assembly of the United Nations on 20 November 1989, has binding force under international law on the Contracting States, including all of the member States of the Council of Europe.

Article 1 of the UN Convention states:

> "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

Article 3(i) states:

> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 37(a) and (b) provides:

> "States Parties shall ensure that:
>
> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age.
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time
>
> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account

the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

Article 40 provides as relevant:

"1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the reintegration and the child's assuming a constructive role in society.

2. To this end ... the States Parties shall, in particular, ensure that:

...

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

...

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

...

(vii.) To have his or her privacy fully respected at all stages of the proceedings.

..."

59. The relevant part of the Concluding Observations of the United Nations Committee on the Rights of the Child: Turkey (09/07/2001(CRC/C/15/Add.152.)) provides as follows:

"65. ... The fact that detention is not used as a measure of last resort and that cases have been reported of children being held incommunicado for long periods is noted

with deep concern. The Committee is also concerned that there are only a small number of juvenile courts and none of them are based in the eastern part of the country. Concern is also expressed at the long periods of pre-trial detention and the poor conditions of imprisonment and at the fact that insufficient education, rehabilitation and reintegration programmes are provided during the detention period.

66. The Committee recommends that the State party continue reviewing the law and practices regarding the juvenile justice system in order to bring it into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), with a view to raising the minimum legal age for criminal responsibility, extending the protection guaranteed by the Juvenile Law Court to all children up to the age of 18 and enforcing this law effectively by establishing juvenile courts in every province. In particular, it reminds the State party that juvenile offenders should be dealt with without delay, in order to avoid periods of *incommunicado* detention, and that pre-trial detention should be used only as a measure of last resort, should be as short as possible and should be no longer than the period prescribed by law. Alternative measures to pre-trial detention should be used whenever possible."

60. The recommendation of the Committee of Ministers to Member States of the Council of Europe on social reactions to juvenile delinquency (no. R (87)20), adopted on 17 September 1987 at the 410th meeting of the Ministers' Deputies, insofar as relevant, reads as follows:

"Recommends the governments of member states to review, if necessary, their legislation and practice with a view: ...

7. to exclude the remand in custody of minors, apart from exceptional cases of very serious offences committed by older minors; in these cases, restricting the length of remand in custody and keeping minors apart from adults; arranging for decisions of this type to be, in principle, ordered after consultation with a welfare department on alternative proposals ..."

61. Article 17 of the European Social Charter 1961 regulates the right of mothers and children to social and economic protection. In that context, the European Committee of Social Rights noted in its Conclusions XVII-2 (2005, Turkey) that the length of pre-trial detention of young offenders was long and the conditions of imprisonment poor.

62. In the report pertaining to its visits carried out in Turkey between 5 and 17 October 1997, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") expressed its serious misgivings "as regards the policy of having juveniles (i.e. 11 to 18 year olds) who are remanded in custody placed in adult prisons" (CPT/Inf(99) 2 EN, publication date: 23 February 1999).

63. In its report prepared in respect of its visits conducted in Turkey between 16 and 29 March 2004 (CPT/Inf (2005) 18), the CPT stated the following:

> "[i]n the reports on its visits in 1997 and September 2001, the CPT has made clear its serious misgivings concerning the policy of having juveniles who are remanded in custody placed in prisons for adults. A combination of mediocre material conditions and an impoverished regime has all too often created an overall environment which is totally unsuitable for this category of inmate. The facts found in the course of the March 2004 visit have only strengthened those misgivings. Here again, the laudable provisions of the Ministry of Justice circular of 3 November 1997 ("the physical conditions of the prison sections allocated to juvenile offenders shall be revised and improved to conform with child psychology and enable practising educative programmes, aptitude intensive games and sports activities") have apparently had little practical impact."

64. According to UNICEF, the juvenile justice system is still in its infancy in Turkey in 2008. Judges were learning about child-sensitive detention centres, alternative dispute resolution and due process for children in conflict with the law.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65. Relying on Article 3 of the Convention the applicant complained that his trial before the Istanbul State Security Court, coupled with his detention together with adults, had caused him mental suffering. Article 3 of the Convention provides as follows:

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

66. The Government contested that argument.

### A. Admissibility

67. Referring to the Regulations on Prison Administration and Execution of Sentences (see paragraph 56 above), the Government maintained that the applicant had failed to exhaust domestic remedies because neither he nor his lawyer had lodged a complaint under Article 106 of the Regulations to complain about the applicant's detention with adults. The Government also pointed out that it would have been possible for the applicant to bring his complaints to the attention of the trial court or the Court of Cassation.

68. The applicant responded that, in view of the unambiguous wording of the domestic regulations and relevant international conventions, the authorities had been under an obligation to keep him separately from adult detainees. Since the applicable domestic legislation clearly anticipated the potential dangers to the well-being of a child of the age he had been at the

time, it was not justifiable for the Government to argue that the judges and the prison authorities had been ignorant of those dangers when detaining him in an adult prison.

69. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, § 27, and *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, § 38).

70. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, § 52).

71. The Court further notes that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see the *Akdıvar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, § 69).

72. The Court notes that the applicant was arrested on 30 September 1995 and detained in police custody for a period of twelve days during which, pursuant to domestic legislation in force at the time, he did not have access to a lawyer or to any member of his family (see paragraph 53 *in fine* above). At the end of that police custody on 12 October 1995 he was questioned by a prosecutor and a judge, again in the absence of a lawyer. The same day the judge ordered his detention in prison. In these circumstances, the Court considers it unrealistic to expect a fifteen-year-old person, who had just been released from twelve days of incommunicado police custody, to refer to the Regulations on Prison Administration and Execution of Sentences and ask to be detained separately from adult prisoners.

73. Furthermore, the Court observes that, when ordering the applicant's detention in prison, the judge had in his possession information showing the applicant's date of birth. It appears, therefore, that although the judge was aware that the applicant was only fifteen years of age, he acted in complete disregard of the applicable procedure by ordering the applicant's detention in an adult prison.

74. The first time the applicant was represented by a lawyer was during the third hearing, which was held on 18 April 1996, that is, some six months

after his detention in prison had been ordered (see paragraph 18 above). In the course of those six months the trial court did not only allow the applicant to be unrepresented by a lawyer, but also on two occasions ordered his continued detention in the prison (see paragraphs 15-17 above).

75. The lawyer who represented the applicant between 18 April 1996 and 10 October 2000, for her part, manifestly failed to defend the applicant adequately. As well as not attending 17 of the 25 hearings, she also failed to inform the trial court of the psychological problems faced by the applicant in the prison or his three attempts to kill himself.

76. In the end, it was the applicant's fellow inmates who became aware of that lawyer's failure to represent the applicant adequately and took the initiative to inform the trial court about the medical problems faced by the applicant (see paragraph 32 above).

77. The existence of the applicant's problems was confirmed by the prison doctor in his report of 7 August 2000. In that report the doctor informed the trial court that the applicant had set himself on fire, slashed his wrists and taken an overdose and that he had been in and out of hospital on a number of occasions. The doctor also informed the trial court that the situation in the prison was unsatisfactory for the applicant's treatment; he needed to spend a considerable time in a specialised hospital (see paragraph 38 above).

78. Even after having been informed about the applicant's medical problems and the unsuitability of the prison for their treatment, the trial court ordered the applicant's continued detention in prison.

79. In the present case the Government have not submitted any documents or other evidence showing that the remedy referred to by them was effective for the purposes of Article 35 § 1 of the Convention. Having regard to the widespread practice of detaining minors in adult prisons in Turkey as highlighted in the reports of certain international organisations (see paragraphs 59-64 above), the Court has doubts about the effectiveness of that remedy.

80. In any event, the Court considers that the special circumstances described above absolved the applicant from the requirement to exhaust domestic remedies in respect of his complaints under Article 3 of the Convention. Consequently, this complaint cannot be rejected for non-exhaustion of domestic remedies.

81. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and finds no other ground to declare it inadmissible. It must therefore be declared admissible.

### B. Merits

82. Referring to the Court's case-law under Article 3 of the Convention, the applicant submitted that the Contracting Parties were under an

obligation to take measures to ensure that individuals within their jurisdiction were not subjected to ill-treatment. Such measures should provide effective protection particularly in respect of children and other vulnerable persons and they should include the taking of reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.

83. In his case the respondent State had failed, notwithstanding its obligations both under its own domestic legislation and under international conventions to which it was a party, to provide effective protection against the severity of the applicant's arbitrary detention in an adult prison where he was kept with adults for a period of over five years. Furthermore, for the first eighteen months of that period he had been tried for an offence carrying the death penalty. As he was being tried for an offence falling within the jurisdiction of the State Security Courts, he had been subjected to a severely limited visiting regime in the prison. He had not, for example, had the opportunity to have open visits with his family. The conditions of his detention had adversely affected his mental health and had led him to attempt suicide.

84. He complained that the above-mentioned problems, coupled with his trial before the Istanbul State Security Court, had caused him psychological suffering amounting to inhuman and degrading treatment.

85. The applicant further complained that during his time in prison he had not been provided with adequate medical care, notwithstanding the seriousness of his health problems. In his opinion, the failure to release him, at least temporarily, to enable him to obtain adequate medical care had also amounted to inhuman treatment contrary to Article 3 of the Convention.

86. In support of his complaints the applicant referred to the CPT reports (see paragraphs 62-63 above) in which the CPT expressed its misgivings as regards the policy of detaining juveniles in adult prisons in Turkey.

87. The Government did not dispute that the applicant had been kept in prison together with adults. Referring to the medical report of 25 April 2001 (see paragraph 43 above), they maintained that the applicant had not suffered any mental problems which would have exempted him from being criminally liable for his actions. They also argued that the ill-treatment allegedly suffered by the applicant had not attained the minimum level of severity falling within the scope of Article 3 of the Convention.

88. The Court observes at the outset that the applicant's detention in an adult prison was in contravention of the applicable Regulations which were in force at the time (see paragraph 56 above) and which reflected Turkey's obligations under International Treaties (see paragraph 58 above).

89. It further observes that, according to the medical report drawn up on 25 April 2001 (see paragraph 43 above), the applicant's psychological problems had begun during his detention in the prison and worsened in the course of his five-year detention there. The medical reports of 24 July 2000

and 7 August 2000 also detailed the serious medical problems from which the applicant was suffering in the prison. The Court considers that the fact that the applicant was found to be fit for trial and his psychological problems to be in remission some six months after his release from the prison does not alter the seriousness of the medical problems he experienced whilst detained.

90. As pointed out by the Government, ill-treatment must attain the minimum level of severity for it to fall within the scope of Article 3 of the Convention (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, § 162). The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, § 52).

91. In the present case, the Court disagrees with the Government's submissions that the applicant's problems did not reach the minimum level of severity to fall within the scope of Article 3 of the Convention. The applicant was only fifteen years old when he was detained in a prison where he spent the next five years of his life together with adult prisoners. For the first six and a half months of that period he had no access to legal advice. Indeed, as detailed above (see paragraphs 74 and 75 above), he did not have adequate legal representation until some five years after he was first detained in prison. These circumstances, coupled with the fact that for a period of eighteen months he was tried for an offence carrying the death penalty, must have created complete uncertainty for the applicant as to his fate.

92. The Court considers that the above-mentioned features of his detention undoubtedly caused the applicant's psychological problems which, in turn, tragically led to his repeated attempts to take his own life.

93. The Court further considers that the national authorities were not only directly responsible for the applicant's problems, but also manifestly failed to provide adequate medical care for him. There are no documents in the file to indicate that the trial court was informed about the applicant's problems and his suicide attempts until the summer of 2000 (see paragraphs 32 and 36 above). Nor are there any documents in the file to show that the trial court showed any concern for the applicant when he repeatedly failed to turn up for the hearings. In fact, the first time the trial court was informed about the applicant's problems was not by any official responsible for prisoners – such as a prison governor or a prison doctor – all of whom were aware of these problems, but by the applicant's cell-mates (see paragraph 32 above). It was those cell-mates who also forwarded the prison doctor's medical report to the trial court (see paragraph 33 above).

94. According to that report, the prison was not an adequate place for the applicant's treatment; he needed to spend a considerable time in a specialist

hospital (see paragraph 38 above). The Court notes with regret that that information provided by the prison doctor did not spur the trial court into action to ensure adequate medical care for the applicant. The only step taken by the trial court was to refer the applicant to a hospital – not for treatment for his medical problems but for a medical examination with a view to establishing whether he had had the necessary criminal capacity (*doli capax*) when he allegedly committed the offence with which he had been charged (see paragraph 35 above).

95. Indeed, as pointed out by the applicant, the trial court not only failed to ensure that he received medical care, but even prevented him and his family from doing so by refusing to release him on bail for an additional period of two and a half months (see paragraphs 35 and 41 above).

96. At this juncture the Court reiterates that, although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX and the cases cited therein). As set out above, the authorities did not acquit themselves of that obligation.

97. It must also be noted that no action appears to have been taken, notwithstanding the applicant's psychological problems and his first suicide attempt, to prevent him from making any further such attempts (see, in this connection, *Keenan v. the United Kingdom*, no. 27229/95, §§ 112-116, ECHR 2001-III).

98. Having regard to the applicant's age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care for his psychological problems, and, finally, the failure to take steps with a view to preventing his repeated attempts to commit suicide, the Court entertains no doubts that the applicant was subjected to inhuman and degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

99. The Court considers it unnecessary to examine separately the complaint that the applicant's trial by a State Security Court had also amounted to ill-treatment within the meaning of Article 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLES 5 § 3 AND 13 OF THE CONVENTION

100. The applicant complained under Article 5 § 3 of the Convention that the length of his detention on remand was excessive. He further contended under Article 13 of the Convention that there were no remedies in domestic law to challenge the length of his detention on remand. The

Court considers that the complaint formulated under Article 13 of the Convention should be examined solely from the standpoint of Article 5 § 4 of the Convention. Article 5 § 3 and 4 provide as follows:

> "3. 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...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

101. The Government contested these arguments and maintained that the applicant had been detained as a remand prisoner between 30 September 1995 and 17 October 1997. After that latter date he had been serving his prison sentence and was therefore no longer on remand.

102. The Court observes that the applicant's detention, for the purposes of Article 5 § 3 of the Convention, began when he was arrested on 30 September 1995 and continued until he was convicted by the trial court on 17 October 1997. From 17 October 1997 until his conviction was quashed by the Court of Cassation on 12 March 1998, he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see *Solmaz v. Turkey*, no. 27561/02, § 34, ECHR 2007-II (extracts) and the cases cited therein). From 12 March 1998 until his release on bail on 10 October 2000, however, the applicant was once more in pre-trial detention for the purposes of Article 5 § 3 of the Convention. It follows that the applicant spent a total of four years, seven months and fifteen days as a remand prisoner.

### A. Admissibility

103. The Government argued that the applicant could not claim to be a victim of a violation of Article 5 § 3 of the Convention because the time spent by him on remand was subsequently deducted from the sentence imposed on him by the trial court on 22 May 2001 (see paragraph 44 above).

104. The Court has already examined similar submissions made by the respondent Government in other cases (see, for example, *Arı and Şen v. Turkey*, no. 33746/02, § 19, 2 October 2007 and the cases cited therein) and concluded that the deduction of the time spent in prison as a remand prisoner from the later sentence could not eliminate a violation of Article 5 § 3. In the present case the Government have not submitted any arguments which could lead the Court to reach a different conclusion. Accordingly, the Government's objection to the applicant's victim status must be rejected.

105. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

### *1. Article 5 § 3 of the Convention*

106. The Government argued that there had been a genuine requirement of public interest for the continued detention of the applicant, who had been charged with a serious offence. There had also been a high risk of him escaping or destroying the evidence against him.

107. The applicant maintained his allegations.

108. The Court observes that the Government, beyond arguing that the applicant's detention was justified on account of the offence with which he was charged, did not argue that alternative methods had been considered first and that his detention had been used only as a measure of last resort, in compliance with their obligations under both domestic law and a number of international conventions (cf. for example *Nart v. Turkey*, no. 20817/04, § 22, 6 May 2008). Nor are there any documents in the file to suggest that the trial court, which ordered the applicant's continued detention on many occasions, at any time displayed concern about the length of the applicant's detention. Indeed, the lack of any such concern by the national authorities in Turkey as regards the detention of minors is evident in the reports of the international organisations cited above (paragraphs 61-64).

109. In at least three judgments concerning Turkey, the Court has expressed its misgivings about the practice of detaining children in pre-trial detention (see *Selçuk v. Turkey*, no. 21768/02, § 35, 10 January 2006; *Koşti and Others v. Turkey*, no. 74321/01, § 30, 3 May 2007; and *Nart v. Turkey*, cited above, § 34) and found violations of Article 5 § 3 of the Convention for considerably shorter periods than that spent by the applicant in the present case. For example, in *Selçuk* the applicant had spent some four months in pre-trial detention when he was sixteen years old and in *Nart* the applicant had spent forty-eight days in detention when he was seventeen years old. In the present case, the applicant was detained from the age of fifteen and was kept in pre-trial detention for a period in excess of four and a half years.

110. In the light of the foregoing, the Court considers that the length of the applicant's detention on remand was excessive and in violation of Article 5 § 3 of the Convention.

*2. Article 5 § 4 of the Convention*

111. The Government submitted that the applicant did in fact have the possibility of challenging his pre-trial detention by lodging objections pursuant to Articles 297-304 of the Code of Criminal Procedure (compare *Bağrıyanık v. Turkey*, no. 43256/04, § 19, 5 June 2007).

112. The Court has already examined the possibility of challenging the lawfulness of pre-trial detention in Turkey at the relevant time and concluded that it offered little prospect of success in practice and that it did not provide for a procedure that was genuinely adversarial for the accused (see *Koşti*, cited above, § 22; *Bağrıyanık*, cited above, §§ 50-51; and *Doğan Yalçın v. Turkey*, no. 15041/03, § 43, 19 February 2008). The Court finds no particular circumstances in the instant case which would require it to depart from its previous findings.

113. In the light of the foregoing the Court concludes that there has been a breach of Article 5 § 4 of the Convention.

## III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

114. Under Article 6 § 1 of the Convention, the applicant alleged that

- he had been denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Istanbul State Security Court which had tried and convicted him;
- the criminal proceedings against him had not been concluded within a reasonable time;
- the principle of equality of arms had been violated on account of his inability to respond to the public prosecutor's submissions since he had been a minor, suffering from psychological problems;
- the written observations of the principal public prosecutor at the Court of Cassation had not been served on him; and that
- the judgment of the Istanbul State Security Court had been arbitrary and lacked reasoning.

115. The applicant also alleged a violation of Article 6 § 2 of the Convention because the bill of indictment drafted by the public prosecutor at the Istanbul State Security Court had been based on a report prepared by the security forces. He further maintained under the same head that the excessive length of his detention on remand had violated his right to the presumption of innocence.

116. The applicant complained under Article 6 § 3 of the Convention that he had not been informed of the charges against him and that he had been deprived of his right to have adequate time and facilities for the preparation of his defence. Although he had been unable to defend himself, he had not been appointed a lawyer. The relevant parts of Article 6 of the Convention provide as follows:

"1. 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...

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

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

117. The Government contested the applicant's arguments and maintained that his trial had been fair.

### A. Admissibility

118. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### B. Merits

119. The applicant submitted that at the time of his arrest he had only been 15 years of age, and that he had been kept in police custody for a period of 13 days and questioned there without the assistance of a lawyer. He had subsequently been tried for an offence carrying the death penalty and his mental stability had deteriorated over time. He had not been able to attend a large number of the hearings because of injuries resulting from his suicide attempts and because of his psychological problems. He had not had the assistance of a lawyer or a psychologist to cope with such an onerous trial and he had not had the opportunity to examine the case or adduce evidence in his favour.

120. In respect of the above, and referring to the judgments in the cases of *T. v. the United Kingdom* [GC] (no. 24724/94, 16 December 1999) and *V. v. the United Kingdom* [GC] (no. 24888/94, ECHR 1999-IX), the applicant complained that he had been deprived of the opportunity to participate effectively in his trial.

121. The Government submitted that the police had reminded the applicant of the charges against him and his rights. Furthermore, he had benefited from the assistance of a legal representative right from the beginning of the proceedings.

122. The Court observes that in a number of applications against Turkey involving a complaint of an alleged lack of independence and impartiality on the part of State Security Courts, the Court has limited its examination to that aspect alone, not deeming it necessary to address any other complaints relating to the fairness of the impugned proceedings (see, *inter alia*, *Ergin v. Turkey (No. 6)*, no. 47533/99, § 55, 4 May 2006). However, the Court deems it necessary to put this well-rehearsed approach aside in the instant case because the particularly grave circumstances of the application present more compelling issues involving the effective participation of a minor in his trial and the right to legal assistance.

123. The Court reiterates that the right of an accused under Article 6 of the Convention to participate effectively in his or her criminal trial generally includes not only the right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained, in particular, in sub-paragraph (c) of paragraph 3 of Article 6 – "to defend himself in person".

124. "Effective participation" in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed (see, most recently, *Timergaliyev v. Russia*, no. 40631/02, § 51, 14 October 2008, and the cases cited therein). It also requires that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to defence counsel his or her version of events, point out any statements with which he or she disagrees and make the trial court aware of any facts which should be put forward for the defence (see *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, § 30).

125. The applicant in the present case was arrested on 30 September 1995 and subsequently charged with an offence for which the only punishment foreseen was the death penalty. Despite his very young age, the legislation applicable at the time prevented the applicant from having his trial conducted before a juvenile court (see paragraph 54 above) and from having a lawyer appointed for him by the State (see paragraph 53 above).

126. He was not represented by a lawyer until 18 April 1996, that is some six and a half months after he was arrested. While he remained unrepresented he was questioned by the police, a prosecutor and a duty judge, indicted, and then questioned by the trial court (see paragraphs 7,

11-13 and 16-17; see also *Salduz v. Turkey* [GC], no. 36391/02, §§ 50-63, 27 November 2008 concerning the absence of legal representation for a minor in police custody).

127. Fourteen hearings were held in the course of the first trial and 16 in the retrial. The applicant did not attend at least 14 of those hearings. He claimed that his failure to attend had been due to his health problems. This claim, which is supported by medical evidence (see paragraphs 32, 33 and 36-38 above), was not disputed by the Government. Furthermore, as pointed out above, the trial court did not entertain any concerns about the applicant's absences from the hearings or take steps to ensure his attendance.

128. In these circumstances the Court cannot consider that the applicant was able to participate effectively in the trial. Furthermore, for the reasons set out below, the Court does not consider that the applicant's inability to participate in his trial was compensated by the fact that he was represented by a lawyer from 18 April 1996 onwards (contrast *Stanford*, cited above, § 30).

129. The lawyer, who declared during the third hearing, held on 18 April 1996, that she would be representing the applicant from then on, failed to attend 17 of the 25 hearings. In fact, in the course of the retrial this particular lawyer attended only one of the hearings, held on 18 March 1999. During the crucial final stages of the retrial from 18 March 1999 until he was represented by Ms Avcı on 10 October 2002 (see paragraph 39 above) the applicant was completely without any legal assistance.

130. At this juncture the Court reiterates its established case-law according to which the State cannot normally be held responsible for the actions or decisions of an accused person's lawyer (see *Stanford*, cited above, § 28) because the conduct of the defence is essentially a matter between the defendant and his counsel, whether appointed under a legal-aid scheme or privately financed (see *Czekalla v. Portugal*, no. 38830/97, § 60, ECHR 2002-VIII; see also *Bogumil v. Portugal*, no. 35228/03, § 46, 7 October 2008). Nevertheless, in case of a manifest failure by counsel appointed under the legal aid scheme to provide effective representation, Article 6 § 3 (c) of the Convention requires the national authorities to intervene (*ibid*).

131. In the present case the lawyer representing the applicant was not appointed under the legal aid scheme. Nevertheless, the Court considers that the applicant's young age, the seriousness of the offences with which he was charged, the seemingly contradictory allegations levelled against him by the police and a prosecution witness (see paragraphs 8, 18, 28 and 29 above), the manifest failure of his lawyer to represent him properly and, finally, his many absences from the hearings, should have led the trial court to consider that the applicant urgently required adequate legal representation. Indeed, an accused is entitled to have a lawyer assigned by

the court of its own motion "when the interests of justice so require" (see *Vaudelle v. France*, no. 35683/97, § 59, ECHR 2001-I).

132. The Court has had regard to the entirety of the criminal proceedings against the applicant. It considers that the shortcomings highlighted above, including in particular the *de facto* lack of legal assistance for most of the proceedings, exacerbated the consequences of the applicant's inability to participate effectively in his trial and infringed his right to due process.

133. There has, therefore, been a violation of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (c).

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

134. The applicant complained that he had not had an effective remedy, within the meaning of Article 13 of the Convention, in respect of his complaints under Article 6 of the Convention. Finally, relying on Article 14 of the Convention the applicant alleged that he had been discriminated against because he had been tried by a State Security Court instead of a juvenile court.

135. The Court considers that these complaints may be declared admissible. However, having regard to the violations found above the Court deems it unnecessary to examine these complaints separately on the merits.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. 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

137. The applicant submitted that, at the time of his arrest, he had been working and earning approximately 200 euros (EUR) per month. As a result of his arrest and detention he had been unable to work for a period of five years and one month. Thus, his lost earnings, together with interest, had amounted to EUR 32,000. He claimed that this amount should be awarded to him in respect of pecuniary damage.

138. The applicant also claimed EUR 103,000 in respect of non-pecuniary damage.

139. The Government contested the claims.

140. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

However, having regard to the particularly grave circumstances of the present case and the nature of the multiple violations found, it awards the applicant EUR 45,000 in respect of non-pecuniary damage.

### B. Costs and expenses

141. The applicant also claimed 6,050 Turkish liras (approximately EUR 3,735 at the time of the submission of the claim in 2006) for the costs and expenses incurred before the domestic courts, and 79,670 Turkish liras (EUR 49,200) for those incurred before the Court. In support of his claim the applicant submitted a schedule of costs, showing the hours spent by his two lawyers on the case.

142. The Government considered the sums to be excessive and unsupported by adequate documentation.

143. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000, less EUR 850 received by way of legal aid from the Council of Europe - a total of EUR 4, 150 - covering costs under all heads,

### C. Default interest

144. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

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

6. *Holds* that there is no need to examine separately the complaints under Articles 13 and 14 of the Convention;

7. *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, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 45,000 (forty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,

(ii) EUR 4,150 (four thousand one hundred and fifty euros), plus any tax 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President