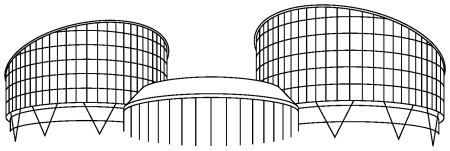

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KAYTAN v. TURKEY

(Application no. 27422/05)

JUDGMENT

STRASBOURG

15 September 2015

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 Kaytan v. Turkey,

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

Nebojša Vučinić, *Acting President,*
Işıl Karakaş,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 25 August 2015,

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

PROCEDURE

1. The case originated in an application (no. 27422/05) 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 Hayati Kaytan ("the applicant"), on 30 June 2005.

2. The applicant was born in 1968 and is currently serving a life sentence. He was represented by Ms C. Vine, R. Reynolds and S. Karakaş, lawyers practising in London, and H. Geylani and Y. Geylani Arslan, lawyers practising in Ankara.

The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged that the life sentence imposed on him, without the possibility of a review, constituted a violation of Article 3 of the Convention. Relying on Articles 5, 6 and 14 of the Convention, the applicant also complained of the lack of legal assistance while in police custody, the lack of independence and impartiality of the trial court as well as his inability to challenge the statements of some of the witnesses.

4. On 25 January 2011 the application was communicated to the Government. On 2 July 2013, the parties were invited to submit additional observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. In March 2002, criminal proceedings were initiated against the applicant *in absentia* for being a member of the PKK (the Workers' Party of Kurdistan), an illegal armed organisation. In the indictment, the public prosecutor relied on, among others, incriminating statements by certain accused persons who, in their statements to the police, had maintained that the applicant had been involved in a number of terrorist activities since 1991. A Red Notice was accordingly issued in respect of the applicant via Interpol.

6. On an unspecified date the applicant was arrested in Syria. After being detained in the Damascus Security Headquarters, allegedly for twenty-three days, the applicant was handed over to the Turkish authorities on 15 August 2003. The medical report issued at the beginning of the applicant's custody indicated no signs of ill-treatment.

7. On 18 August 2003 the applicant was questioned at the Erzurum Gendarmerie Command, in the absence of a lawyer. According to a form explaining arrested persons' rights, which the applicant had signed, he had been reminded of the charges against him, his right to a lawyer and his right to remain silent. The applicant refused legal assistance, and gave a detailed statement regarding his activities in the illegal organisation. He admitted that he had been a member of the PKK since 1989, maintained that he had been involved in several armed attacks and gave details about such events. He also stated that he had been acting as the Paris representative of the illegal organisation since 1994 and signed his statement as such.

8. On the same day, the applicant was examined at the hospital; no signs of ill-treatment were noted on his body. Subsequently, he was questioned by the Erzurum Public Prosecutor. The applicant refused legal assistance and confirmed this in his statement given to the gendarmerie. In this connection, he admitted to being a member of the PKK and participating in several terrorist activities between 1990 and 1998 and also being the Paris representative of the illegal organisation since 1999. He further admitted that he had been involved in some of the armed attacks with which he had been charged. These events were indicated by their location, nature and dates, which were between 1990 and 1998.

The applicant denied his participation in five terrorist attacks which had happened in 1992.

9. Later on the same day, the applicant was taken to the Erzurum State Security Court. Before the court he expressed the wish to be represented by a lawyer, and stated that he would make further submissions once a lawyer had been appointed. The court remanded the applicant in pre-trial detention

and allowed him time for the assignment of a representative until the next hearing to be held on 7 October 2003.

10. On 20 August 2003 the Erzurum Public Prosecutor lodged an additional indictment, charging the applicant under Article 125 of the former Criminal Code with seeking to destroy the constitutional order and unity of the Turkish State and to remove part of the country from the State's control.

11. On 9 December 2003, at the fifth court hearing, in the presence of his three lawyers, the applicant retracted the statements he had made to the gendarmerie and the public prosecutor, alleging that he had been under psychological pressure during his interrogation. He confessed to being a member of the PKK, but only in charge of the instruction of the members, and claimed that he had never taken part in any armed attack. He further submitted that he had been injured during an armed clash in November 1992 and since then had been unable to use his right hand. In this connection he requested a medical report establishing that he was not able to hold a gun with his right hand. The prosecutor opposed this request by referring to the applicant's healthy physical appearance.

12. During the hearing the applicant's representatives contested the testimonies of other accused persons in different criminal proceedings indicating the applicant's involvement or responsibilities as a team leader, by alleging that such testimonies had been given only in order to benefit from legal provisions allowing reduction of sentences. The cross-examination of these witnesses was not requested at any stage of the proceedings.

Again on the same day, the applicant made written submissions to the court and stated that he had signed his statement in custody without reading it.

13. On 27 February 2004 the Forensic Medicine Department of Erzurum Atatürk University issued a report. It found loss of function in the applicant's right hand and concluded that the applicant would have serious difficulty in using a firearm with one hand. However, it was further reported that if his right hand were supported by other parts of his body he would be able to use a firearm.

14. On 4 May 2004, at the ninth hearing, the applicant objected to the medical report, requesting a new report from the Istanbul Forensic Institute. The trial court refused this request, holding that a new medical report would not have any effect on the merits of the case and therefore was not necessary. In this connection, the court held that the illegal acts admitted by the applicant, which had been committed prior to November 1992, thus before his hand was injured, would suffice for charges to be brought against the applicant under Article 125 of the former Criminal Code. It accordingly held that an additional expert report was not required.

15. At a hearing held on 24 August 2004, the applicant repeated his request for an additional medical report, and stated that during his interrogation by the gendarmes and the prosecutor he had felt fearful and anxious and had given his statements under pressure as a result of the conditions in which he had been detained in Syria. He repeated that the testimonies against him by persons accused of terrorism in different proceedings had been made only for collaborating and benefiting from lenient criminal provisions and could be dismissed once the medical report concerning his incapacity was established. The applicant's lawyers also based their arguments on the establishment of a new report.

16. In the meantime, State Security Courts were abolished by Law no. 5190 of 16 June 2004. Accordingly, the case was transferred to the Erzurum Assize Court.

17. On 21 September 2004 the Erzurum Assize Court convicted the applicant as charged. In a reasoned judgment, the court found it established that the applicant had been involved in at least 15 armed attacks committed prior to 1992, among the 59 incidents of which he was accused. It enumerated the acts to which the applicant had confessed while being questioned by the gendarmes and subsequently by the prosecutor, such as setting fire to three primary schools, the robbery of several village guards and clashes with security forces. These acts also corresponded chronologically with each other and with the numerous official documents related to these events. The court further held that these acts would suffice to convict the applicant under Article 125 of the former Criminal Code and underlined that only after several hearings had he contested his initial statements, while choosing to accept his involvement in armed attacks in which terrorists had been killed and denying his implication in those in which members of the security forces had been killed. The court pointed out that the applicant's argument could not be considered credible in view of the chronology of the events. The court further stated that throughout the criminal proceedings the applicant had consistently and proudly stated that he was a member of the illegal organisation to the point of making propaganda for the organisation, and he had shown no remorse which would indicate the likelihood that he would not repeat such crimes. Finally, it indicated that the applicant even refused the possibility of using Law no. 4959 for rehabilitation (certain paragraphs of Article 4 of the cited law foresee sentences varying between 12 and 19 years of imprisonment in replacement of an "aggravated life sentence", according to the authenticity of information provided about the structure of a terrorist organisation or its activities) and accordingly sentenced him to "aggravated life imprisonment".

18. On 7 January 2005 the Court of Cassation upheld the conviction.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

19. For the relevant domestic law and background information, the Court refers to the judgment in *Öcalan v. Turkey (no. 2)* (nos. 24069/03, 197/04, 6201/06 and 10464/07, §§ 62-71, 18 March 2014). In summary, different legal provisions indicate that the execution of an "aggravated life sentence" is maintained for the whole of a prisoner's life; the conditional release options or prescription are not applicable to criminals convicted under Article 125 of the former Criminal Code. Their sentences cannot be reduced except in cases of serious or terminal illness.

20. Information on relevant international and comparative law on life sentences and on the objectives of a prison sentence can be found in the judgments *Dickson v. the United Kingdom* ([GC], no. 44362/04, §§ 28-36, ECHR 2007-V), *Kafkaris v. Cyprus* ([GC], no. 21906/04, §§ 68-76, ECHR 2008), *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, §§ 59-81, ECHR 2013 (extracts)), and *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, §§ 157-174, ECHR 2014 (extracts)).

THE LAW

I. ADMISSIBILITY

21. The applicant complained under Article 5 of the Convention that he had been denied legal assistance while in custody. Under the same provision, he further stated that he had not been able to contact his family, and alleged that the length of time he had spent in custody had been excessive.

22. The applicant alleged under Article 6 of the Convention that he had been denied a fair hearing. In this respect, he argued that the trial court lacked independence and impartiality, that his request for an additional expert report on the condition of his hand had been refused, and that he had not been given an opportunity to challenge the statements of several accused persons who had testified against him in their own police statements.

23. The applicant complained under Article 14 of the Convention that he had been subjected to discriminatory treatment on account of his Kurdish origin.

24. Finally, relying on Article 3 of the Convention, the applicant complained that he had been subjected to degrading treatment while in custody in Syria. He alleged in particular that the prison conditions there had been humiliating and that he had been chained and blindfolded while being transferred to Turkey. In this connection, he also alleged that his

transfer to Turkey by the Syrian authorities was illegal, as he had a residence permit for Germany. The applicant further stated that during his interrogation in Turkey he had been coerced into signing self-incriminating statements. He further alleged that the sentence of aggravated life imprisonment was, by its nature, against the principles of Article 3 of the Convention.

A. Complaints raised under Article 5 of the Convention

25. The applicant complained that he had been denied legal assistance in custody. He also argued that he had not been given an opportunity to contact his family and complained about the length of time he had spent in custody.

26. The Court considers that the applicant's complaint concerning the absence of legal assistance while in custody should be examined under Article 6 of the Convention. As regards the remaining complaints, it notes that the applicant's time in custody ended on 18 August 2003, whereas the application was introduced on 30 June 2005, more than six months later.

27. It follows that this part of the application should be rejected as introduced outside the six-month period under Article 35 §§ 1 and 4 of the Convention.

B. Complaints raised under Article 6 of the Convention

1. Lack of legal assistance

28. The applicant argued that he had not received the assistance of a lawyer while in custody.

29. The Government contested this claim as the applicant had clearly waived such a right.

30. The Court observes in the first place that at the material time there was no restriction in law on the availability of legal assistance for those in custody (see, *a contrario*, *Salduz v. Turkey* [GC], no. 36391/02, § 14, ECHR 2008, for national legislation, see §§ 27-29). Furthermore, it is undisputed that the applicant signed two forms explaining arrested persons' rights, according to which, although the applicant had been reminded of his right to remain silent and to legal assistance, he had stated that he did not require any legal assistance, and had given statements to the gendarmerie and subsequently to the public prosecutor (see paragraphs 7 and 8 above).

31. The Court further observes that the applicant did not at any stage state to the trial court that any request that a lawyer be appointed for him had been refused by the domestic authorities. There is no element in the case file indicating that the applicant had not willingly and unequivocally decided to waive his right to legal assistance during his questioning

(see *Başar v. Turkey* (dec.), no. 17880/07, 15 April 2011, and *Diriöz v. Turkey*, no. 38560/04, §§ 28-38, 31 May 2012).

32. In the circumstances of the present case, the Court concludes that this part of the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Independence and impartiality of the trial court

33. The applicant alleged that, in breach of Article 6 of the Convention, he had not been tried by an independent and impartial court. In this connection, without giving any details, he argued that his trial had commenced before a State Security Court, which, in his opinion, could not be regarded as impartial.

34. The Court notes that following the amendment of the Constitution in 1999, the military judges sitting in state security courts were replaced by civilian judges. In the present case, the criminal proceedings against the applicant were initiated in 2001, after the above-mentioned amendment. Furthermore, the Court reiterates that it has examined similar complaints in the past, and has held that there was no breach of Article 6 of the Convention (see *İmrek v. Turkey* (dec.), no. 57175/00, 28 January 2003). It finds no particular circumstances in the instant case which would require it to depart from its findings in such earlier cases.

35. Consequently, this part of the application must be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. Fairness of the criminal proceedings against the applicant

36. The applicant complained that he did not have a fair trial before the national courts. In this respect, he alleged that the national courts had rejected his request for an additional expert report regarding the condition of his injured hand. He further stated that the trial court had failed in its interpretation of domestic law as, in his view, he should not have been convicted under Article 125 of the Criminal Code but under more lenient provisions. The applicant also complained that he had not been given an opportunity to challenge the statements of witnesses who had testified against him.

37. The Government mainly argued that the right to examine witnesses was not unlimited and refers to the statements of the applicant by relying on *Latimer v. United Kingdom* ((dec.), no. 12141/04, 31 May 2005), a case in which the applicant was convicted upon his own statements without the benefit of legal advice.

38. The Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the obligations undertaken by the High Contracting Parties to the Convention. In particular,

it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140). The Court also notes that as a general rule it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 68, Series A no. 146). The Court finally reiterates that Article 6 § 3(d) enshrines the principle that before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes a statement or at a later stage of the proceedings (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011).

39. In the present case, the Court notes that the applicant's case was examined thoroughly at two levels of jurisdiction, and the decisions of the Erzurum Assize Court and the Court of Cassation were delivered on the basis of domestic law and the particular circumstances of the case. In this respect, the Court notes that the applicant's request for an additional expert report was rejected by the domestic court as it was decided that the outcome of such a report would not be decisive. This was on the basis that the participation of the applicant in armed attacks before November 1992, the date on which his right hand had become partially infirm such as to not allow him to use a gun, had been established. According to the court, such a conclusion dispensed with the necessity of establishing his participation or not in the succeeding acts for which he was prosecuted.

40. Furthermore, although the applicant alleged that his conviction had been based on the incriminating statements of other persons accused of terrorism, the Court observes that neither the applicant nor his lawyers requested at any stage of the proceedings the examination of such witnesses, but rather focused on the alleged incapacity to use a firearm after November 1992, a period which was not taken into consideration by the national court.

41. The Court further notes that the applicant never denied carrying out activities as one of the representatives of the illegal organisation. The admissibility, and reliability, of the confessions which the applicant made during his questioning by the gendarmes and prosecutor were scrutinized on several occasions in full adversarial proceedings during which the applicant was represented by a lawyer. The Assize Court found, having regard to the applicant's conduct during the interviews, that there was no doubt as to the voluntariness of his initial admissions. In particular, it was not convinced

that the applicant was of such vulnerability or had been subjected to such pressure during his detention that reliance on the admissions would be unfair. In the circumstances of the present case, the Court finds no element or argument in the case file on the basis of which to conclude that the domestic proceedings were unfair or that the defence rights of the applicant were prejudiced.

42. In the light of the foregoing, the Court concludes that there is no appearance of a violation of Article 6 of the Convention. It follows that this part of the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Complaint raised under Article 14 of the Convention

43. The applicant alleged under Article 14 of the Convention that he had been subjected to discriminatory treatment on account of his Kurdish origin.

44. The Court has examined the applicant's allegations in the light of the evidence submitted to it and considers them unsubstantiated.

45. It follows that this part of the application should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

D. Complaints raised under Article 3 of the Convention

1. The applicant's custody in Syria

46. Relying on Article 3 of the Convention, the applicant firstly complained about the treatment he had been subjected to by the Syrian authorities while in custody in Damascus.

47. The Court notes that Syria is not a party to the Convention, and that this part of the application is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

2. The applicant's custody in Turkey

48. The applicant further alleged that he had been coerced by the gendarmerie into making self-incriminating statements. In this connection, he alleged that he had been subjected to psychological pressure while in custody.

49. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong,

clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

50. In the present case, the Court observes that the applicant has not submitted any evidence demonstrating that he had been subjected to physical or psychological pressure while in custody. Nor did he argue that he had been unable to obtain, or had been prevented from obtaining, any such evidence. In this connection, the Court notes that the two medical reports included in the case file indicated no signs of ill-treatment on the applicant's body and at no stage of the domestic proceedings or during the Strasbourg proceedings has the applicant challenged the veracity of these reports or alleged that the doctors who issued them failed to examine him properly. The Court therefore considers that the applicant has not laid the basis of an arguable claim.

51. It follows that this part of the application should be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. Complaint related to "aggravated life imprisonment"

52. The applicant further alleged under Article 3 of the Convention that the life sentence imposed on him amounted to inhuman punishment as there was no possibility of review or commutation.

53. The Government considered that the execution modalities of a criminal sentence were not covered by the Convention and referred to the decision in *Sawoniuk v. the United Kingdom* ((dec.), no. 63716/00, ECHR 2001-VI).

54. Given the fact that the compatibility with Article 3 of the Convention of a life sentence without possibility of review was examined by the Grand Chamber in the above-mentioned *Vinter and Others* judgment (§§ 104, 107-115, 119, and 123-131), the Court rejects this objection.

55. The Government further stressed that the applicant had not exhausted domestic remedies as he had not brought such a complaint to the knowledge of the national authorities.

56. The Court observes that the irreducible nature of the "aggravated life imprisonment" arises from national legislation (see paragraph 19 above). As such, the applicant did not have at his disposal effective domestic remedies in respect of his complaint. Furthermore, the Government have not shown the existence of any available domestic remedy at the material time. The Court therefore rejects the Government's objection.

57. As this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, it must be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicant considered that the sentence of life imprisonment without possibility of review is incompatible with the requirements of Article 3, which reads as follow:

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

59. The Government, in summary, indicated that the Court had underlined in its judgment in *Vinter and Others* (cited above) that for a criminal who remained a threat to society the goal of rehabilitation might never be fulfilled.

A. General principles relating to the need for a review mechanism in respect of whole life sentences

60. The Court reiterates that imposing life sentences on adult offenders for especially serious crimes is not in itself prohibited by, or incompatible with, Article 3 or any other Article of the Convention. However, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (see *Kafkaris*, cited above, §§ 97 and 98, and *Vinter and Others*, cited above, §§ 106 and 107).

61. The Court reaffirmed the two particular but related aspects of this principle in its above-mentioned judgment *Vinter and Others* as follows (§§ 108 and 109 and the references cited therein):

> "108. First, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is *de jure* and *de facto* reducible. In this respect, the Court would emphasise that no Article 3 issue could arise if, for instance, a life prisoner had the right under domestic law to be considered for release but was refused on the ground that he or she continued to pose a danger to society. This is because States have a duty under the Convention to take measures for the protection of the public from violent crime and the Convention does not prohibit States from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary for the protection of the public. Indeed, preventing a criminal from re-offending is one of the "essential functions" of a prison sentence. This is particularly so for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may have already served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous.
>
> 109. Second, in determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3."

62. After examining the elements of European and international law confirming the principle that all prisoners, including those sentenced to life, should be given the opportunity to progress towards rehabilitation and the prospect of being released if they succeed, the Court made specific findings under Article 3 regarding life sentences (*Vinter and Others*, cited above, §§ 119-122):

> "119. (...) the Court considers that, in the context of a life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.
>
> 120. However, the Court would emphasise that, having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing, it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place. This being said, the Court would also observe that the comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter.
>
> 121. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.
>
> 122. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration."

B. The present case

63. The Court notes that the applicant has been sentenced to an "aggravated life sentence" for terrorist activities seeking to destroy the unity of the State and to remove part of the country from the State's control. Such a penalty means that he will remain in prison for the rest of his life,

regardless of any consideration relevant to his dangerousness and without the possibility of release on parole even after a period of detention (see *mutatis mutandis*, *Öcalan (no. 2)*, cited above, §§ 182-186, the findings of the Court as to the complaints under Article 7 of the Convention).

64. The Court notes that the applicant was sentenced under Article 125 of the former Criminal Code, and according to Article 107 of Law No. 5275 on the enforcement of sentences and security measures, his situation is clearly excluded from the scope of release on parole or prescription *(Öcalan (no. 2)*, cited above, § 202).

65. Although release on health grounds is foreseen in domestic law, the Court recalls that such a possibility, or amnesty, was not considered as corresponding to the notion of "prospect of release" on legitimate penological grounds (*Vinter and Others*, cited above, § 129, and *Öcalan (no. 2)*, cited above, § 203).

66. On the other hand, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration (*Vinter and Others*, cited above, § 122).

67. Thus, the Court considers that there is no element or argument in the case-file, or any example of national court decisions, which would allow it to depart from its conclusion in the above-mentioned *Öcalan (no. 2)* judgment. The Court therefore holds that there has been a breach of Article 3 of the Convention.

68. The Court considers it also necessary to underline the fact that the applicant has not sought to argue that there are no longer any legitimate penological grounds for his continued detention, and reiterates that the finding of a violation cannot be understood as giving him the prospect of imminent release (*Vinter and Others*, cited above, §§ 108, 120 and 131, *Öcalan (no. 2)* cited above, § 207; see also *Harakchiev and Tolumov*, cited above, §§ 247-268).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government contested this claim.

72. The Court considers that its finding of a violation of Article 3 constitutes sufficient just satisfaction and accordingly makes no award under this head (see *Vinter and Others*, cited above, § 136).

B. Costs and expenses

73. The applicant also claimed 2,207.85 pounds sterling (GBP) for the costs and expenses incurred before the Court as legal work and administrative costs.

74. The Government submitted that the applicant had not shown that the costs sought had been actually and necessarily incurred.

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

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint related to life imprisonment admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention by reason of the lack of possibility of review of the life sentence imposed on the applicant;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds,*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), to be

converted into pounds sterling at the rate applicable at the date of settlement, in respect of costs and expenses plus any tax that may be chargeable to the applicant;

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

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

Done in English, and notified in writing on 15 September 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Nebojša Vučinić
Registrar	Acting President