



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

FIRST SECTION

CASE OF ECER AND ZEYREK v. TURKEY

(Applications nos. 29295/95 and 29363/95)

JUDGMENT

STRASBOURG

27 February 2001

FINAL

27/05/2001

In the case of Ecer and Zeyrek v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr GAUKUR JÖRUNDSSON,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 February 2000 and on 6 February 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 29295/95 and 29363/95) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mr Abdülaziz Ecer and Mr Mehmet Zeyrek ("the applicants"), on 18 July 1995.

2. The applicants, who had been granted legal aid, were represented by Mr S. Tanrikulu, a lawyer practising in Diyarbakır (Turkey). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged, in particular, that the application of Law no. 3713 of 12 April 1991 to acts committed by them in 1988 and 1989 amounted to a retrospective punishment in breach of Article 7 of the Convention.

4. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 15 February 2000, the Chamber declared the applications admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry]. The President of the Chamber decided that in the interests of the proper administration of justice the present applications should be joined to each other.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Arrest and detention of the applicants

8. On 2 September 1993 security forces from the Şırnak central gendarmerie command apprehended the applicants. An arrest protocol of the same day stated that the applicants had been arrested on the grounds that they were wanted for the offences of aiding and sheltering members of the PKK (Workers' Party of Kurdistan) terrorist organisation and acting as couriers in the organisation as well as supplying logistic support to the organisation. The applicants were then placed in custody.

9. On 22 September 1993 two officers interrogated the applicants at the Şırnak central gendarmerie command. During their interrogation the applicants both confessed that they had been involved in the PKK since 1988 and that they had supplied food and money to PKK militants. The applicant Abdülaziz Ecer stated that he had placed his son, Mustafa Ecer, at the disposal of the PKK rather than paying them a levy. The applicant Mehmet Zeyrek told the officers that he had been carrying provisions on mules to PKK militants and that he had last carried a battery for them in August 1993.

10. The applicants were then confronted with a witness, İkrâm Yamaner, who had been arrested on charges of aiding and sheltering members of the PKK between April 1990 and July 1992. İkrâm Yamaner identified the applicants and stated that they had been supplying food and clothes to members of the PKK when he was in the organisation.

11. On 23 September 1993 the Şırnak public prosecutor questioned the applicants in relation to their activities in the PKK. He first informed the applicants of the nature and cause of the accusations against them and then read out the statements they had made to the officers during their detention

in custody. The applicants denied the accuracy of the statements read out by the public prosecutor. They alleged that they had no connection with the PKK and that they had never supplied provisions to members of the organisation. Abdülaziz Ecer asserted that his son, Mustafa Ecer, had been abducted by the PKK and had been forced to join the organisation, contrary to what was written down by the gendarme officers during his questioning at the Şırnak gendarmerie command.

On the same day, 23 September 1993, the applicants were brought before the Şırnak Magistrates' Court (*sulh ceza mahkemesi*). Before the court the applicants denied their involvement in the PKK and claimed that they were innocent of the charges. The court ordered the applicants' detention on remand.

12. On 24 September 1993 the Şırnak public prosecutor issued a decision of non-jurisdiction and sent the investigation file to the Principal Public Prosecutor's Office at the Diyarbakır National Security Court.

B. Trial in the Diyarbakır National Security Court

13. On 19 October 1993 the Principal Public Prosecutor filed an indictment with the Diyarbakır National Security Court accusing the applicants of having assisted and given shelter to members of the PKK between 1988 and 1989. The public prosecutor alleged that the applicants had supplied food to members of the armed gang in a rural area. He further asserted that the applicant Abdülaziz Ecer had stored food in his shop for members of the gang and that he had helped and sheltered them by means of his contacts with his son, currently an active militant in the gang. The public prosecutor relied on the applicants' confessions at the Şırnak central gendarmerie command and the evidence given by the witness İkrâm Yamaner, as well as the documents contained in the investigation file.

The public prosecutor requested that the applicants be punished in accordance with Article 169 of the Turkish Criminal Code and section 5 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991, "the 1991 Act"; see paragraph 19 below).

14. In the proceedings before the Diyarbakır National Security Court the applicants denied the statements they had made during their detention in custody. They both alleged that the gendarme officers had prepared those statements and that they had signed without reading them.

The applicants further maintained that they did not know of İkrâm Yamaner, with whom they had allegedly been confronted, since they had been kept blindfolded during their questioning while in custody. They asked the court to rule that they were innocent of the charges.

15. On 12 May 1994 the Diyarbakır National Security Court convicted the applicants on account of their assistance to the PKK in 1988 and 1989, sentenced them to three years and nine months' imprisonment and debarred

them from public service for three years. In assessing the penalty to be imposed, the court first found that a sentence of three years' imprisonment would be appropriate under Article 169 of the Turkish Criminal Code; it then applied section 5 of the 1991 Act, according to which this sentence had to be increased by half, that is, to four years and six months' imprisonment; finally the court applied Article 59 of the Turkish Criminal Code, thereby reducing the sentence by one-sixth and thus decreasing the overall length to three years and nine months' imprisonment. The court held, in particular:

“Offence: Aiding and sheltering members of the illegal PKK organisation

Date of the offence: 1988 and 1989

...

Assessment of the evidence:

1. The defendant Mehmet Zeyrek

In his statements to the gendarmes, he said that he had been influenced by the propaganda spread by members of the PKK during their frequent visits to [his] village in 1989. Having seen that the organisation worked for them he had begun aiding [the PKK]. He had given his relative Behiye Zeyrek to the organisation rather than paying them a levy. He knew some of the members of the organisation with the code names Hamit, Mahmut, Sorej, Rojger and Ahmet. He met them in the Besta region, at the Kaniye Rengin point, at the Zirvi stream and on the outskirts of the Elma mountain. He knew a few of the warriors. [He stated further] that, on the instructions of the organisation and the instructions he had received from leaders of the groups during his meetings, he had carried provisions to them on his mules. Nobody had helped him to join the organisation. Members of the organisation had spread propaganda [in favour of the PKK] in the past, but they did not do it later as everybody knew the organisation. He also stated that some time before he had carried a battery and some provisions to a militant with the code name Hamza at the coalmine across from the Milli [gendarmerie] station.

In his statements to the public prosecutor, he denied the [accuracy of] his statements to the gendarmes; he claimed that he did not know a person with the code name Ahmet, that the latter had not told the truth about him but had slandered him. He [maintained] that he had not carried provisions to [members of] the organisation. He denied that he had placed Behiye Zeyrek at the disposal of the PKK rather than paying them a levy. He alleged that he did not know of her whereabouts.

In his statements to the Şırnak Magistrates' Court, he submitted that he had never supplied aid to the PKK terrorist organisation, that he had never carried provisions to [PKK militants], that he had never met members of the [PKK]. [He claimed] that he is innocent of the charges.

In his statements to our court, the defendant denied the charges of aiding and sheltering [members of] the PKK. He alleged that he did not know of İkrâm Yamaner who was mentioned in the bill of indictment. He claimed that he is innocent of the charges.

According to the identification and confrontation protocol contained in dossier no. 9, when the defendant Mehmet Zeyrek was shown to İkrām Yamaner with the code name Ahmet, the latter stated that he knew of Mehmet Zeyrek. He submitted that [Mehmet Zeyrek] used to come to see members of the organisation with the code names Erdal, Mehmet, Hamit and Serxabun and that he had often brought provisions on ten to fifteen mules to the Besta region, the Elma mountain, the Zirvi stream and to the Keniya Rengin point. [The witness] further stated that he had shown [to security forces] the places where these provisions were stored. He claimed that the defendant [Mehmet Zeyrek] was an important militant in the organisation.

When İkrām Yamaner gave evidence as a witness before our court, he stated that the defendant had met senior members of the organisation, that he was a permanent member of the organisation and that he had frequently been in contact with [a militant] with the code name Erdal. [He further stated] that the defendant had supplied provisions such as food, drinks and weapons to the organisation.

It was established that the defendant had supplied provisions to members of the armed organisation who used to come to his village and that he had further supplied them provisions in rural areas. These acts of the defendant constitute the offence of knowingly aiding and sheltering members of an armed gang, [namely] the illegal PKK terrorist organisation. The court therefore concludes that there exist the *actus reus* and *mens rea* elements of the offence. His defence in this respect was rejected.

The defendant's good conduct during the hearing was considered to be a mitigating circumstance.

2. The defendant Abdülaziz Ecer

In his statements to the gendarmes he said that he had joined the PKK in early 1988 following the advice given by those in charge of the Besta region with the code names Amid and Mahmut during their visit to his village. He first placed his son Mustafa Ecer at the disposal of the organisation in order to help it. His son is currently an active armed militant in the organisation. He worked as a shopkeeper in the Geçitboyu village of the province of Şırnak and later on he stopped working. Apart from his son with the code name Amid, he knew [militants] with the code names Mahmut, Sorej and Ahmet as well as Aydın and Kalender. Since he worked as a shopkeeper, he allowed members of the organisation to take as many provisions as they wanted. Sometimes he was given money by members of the organisation with which he bought provisions such as flour, sugar and butter. He kept these provisions in his shop until he delivered them [to the militants]. He supplied aid to the organisation on the instructions of an armed militant in the organisation from his village with the code name Cafer Demir. He gave packs of cigarettes to a member of the organisation with the code name Ahmet. [The defendant] further stated that he had been given money by a member of the organisation with the code name Mahmut who wanted him to buy 1000 bags of flour. He delivered [to the organisation] thirty mule-loads of provisions such as flour, butter, sugar, lentils, socks and *peşmerge* clothing.

In his statements to the public prosecutor, he claimed that he had not helped members of the organisation and that he had not supplied any materials to the organisation. He alleged that he did not know of İkrām Yamaner who had the code name Ahmet. He denied the latter's allegations and submitted that he had no links with the organisation.

In his statements to the Şırnak Magistrates' Court, [the defendant] alleged that he had not given aid to the PKK terrorist organisation, that he had not bought provisions for members of the organisation and that he had not bought flour for them either. He denied the charges against him.

In his oral evidence before our court, [the defendant] denied the charges brought against him. He submitted that Mustafa Ecer, who was mentioned in the bill of indictment, was his son. He had not seen him for five years. He heard [through some people] that his son had died. He claimed that he had not given aid to members of the PKK by means of sheltering them or supplying them with provisions.

According to the identification and confrontation protocol contained in dossier no. 9, when the defendant Abdülaziz Ecer was shown to İkrâm Yamaner with the code name Ahmet, the latter stated that he knew of Abdülaziz Ecer and that he had visited him at his home [while] he was working as a shopkeeper in the village. The team commander with the code name Mahmut gave some money to Abdülaziz Ecer and asked him to buy 1000 bags of flour. The defendant used a room at the back of his house and opposite his shop as a depot. The defendant supplied provisions to the organisation and brought 600 pairs of shoes with the brand name of Mekap. The defendant's son with the code name Erdal is an active militant in the organisation whose real name he did not know. İkrâm Yamaner further stated that he had been a team commander and that the defendant had brought them twenty bags of sugar, flour, butter and lentils and thirty mule-loads of provisions.

İkrâm Yamaner, in his capacity as a witness before our court, stated that the defendant had supplied provisions such as food, drink and arms to the organisation. He further stated that the defendant was an active militant in the organisation and that he had frequently seen the defendant while he was in the organisation.

It was established that the defendant had supplied provisions to members of the armed organisation who used to come to his village, the village of Geçitkaya, and that he had further supplied them provisions in rural areas. Further, the defendant stored provisions in his shop for members of the gang. He met members of the gang with the help of his son, Mustafa Ecer, who is currently in the organisation and supplied them with the materials they needed. By these acts, the defendant is guilty of the offence of knowingly aiding and sheltering members of an armed gang, [namely] the illegal PKK terrorist organisation. The court therefore concludes that there exist the *actus reus* and *mens rea* elements of the offence. His defence in this respect was rejected.

The defendant's good conduct during the hearing was considered to be a mitigating circumstance."

C. Proceedings on appeal

16. On 11 July 1994 the applicants lodged an appeal with the Court of Cassation, challenging the judgment of the Diyarbakır National Security Court. In particular, they alleged that the National Security Court had violated the principle of non-retrospective application of the criminal law since it had applied section 5 of the 1991 Act to increase the basic penalty under Article 169 of the Turkish Criminal Code by half. The applicants

submitted that they had been convicted of acts committed in 1988 and 1989 as indicated in the bill of indictment. They maintained that the witness, İkrām Yamaner, who testified against them and who had been apprehended in 1991, had said that 1988 and 1989 were the dates of the offences. The applicants finally argued that the court should not have admitted the statements made to the gendarmes as evidence since they had retracted them, asserting that they had been extracted under duress.

17. On 21 February 1995 the Court of Cassation rejected the appeal. It upheld the cogency of the National Security Court's reasoning and its assessment of the evidence. The Court of Cassation did not deal specifically with the applicants' complaint relating to the retroactive application of the 1991 Act to their case.

18. On 22 May 1995 the applicants applied to the Principal Public Prosecutor's Office at the Court of Cassation requesting the rectification of the decision of 21 February 1995. On 19 June 1995 their request was dismissed by the Principal Public Prosecutor on the grounds that the Court of Cassation had examined all the points raised by the applicants and there was no other reason requiring the rectification of the decision.

II. RELEVANT DOMESTIC LAW

19. Article 169 of the Turkish Criminal Code provides:

"Any person who, knowing that such an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons and ammunition or clothes or facilitates its operations in any manner whatsoever shall be sentenced to not less than three and not more than five years' imprisonment ..."

According to the Government, the act of assisting and giving shelter to members of an illegal organisation has the character of continuity and the offence is a continuing one.

20. Under section 4 of the 1991 Act, the offence defined in Article 169 of the Criminal Code is classified in the category of "acts committed to further the purposes of terrorism".

Pursuant to section 5 of the 1991 Act, the penalty laid down in the Criminal Code as punishment for the offence defined in section 4 of the Act is increased by one half.

21. Article 150 of the Turkish Code of Criminal Procedure provides:

"The punishment resulting from an investigation and conviction is determined by the crimes set forth in the indictment and can concern only those persons named in the indictment."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

22. The applicants complained that the application of section 5 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991 – “the 1991 Act”) to acts committed by them in 1988 and 1989 constituted retrospective punishment in breach of Article 7 of the Convention, which reads:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

A. Arguments before the Court

1. The Government

23. The Government pointed out that the applicants were charged with assisting and giving shelter to an illegal organisation, an offence which was defined in Article 169 of the Turkish Criminal Code and was of a continuing nature. They maintained that during their interrogation at the Şırnak central gendarmerie command the applicants both admitted that they had been helping militants of the PKK since 1988 and 1989.

24. In this respect, the Government highlighted the statements given by the applicant Mehmet Zeyrek who confessed that he had given a battery to a PKK militant in August 1993. They also referred to the evidence given by İkrâm Yamaner, a former PKK militant, who had testified before the Şırnak Magistrates’ Court and the Diyarbakır National Security Court as well as during his confrontation with the applicants at the Şırnak central gendarmerie command that the applicants had been involved in the PKK while he was a member of the latter organisation between April 1990 and July 1992.

25. The Government asserted therefore that the years 1988 and 1989 set out in the Principal Public Prosecutor’s indictment should be considered the dates of commencement of the incriminated acts. In their view, the courts had applied section 5 of the 1991 Act to acts which began in 1988 and 1989 and continued until 1993. On that account, the Government asked the Court to reject the applicants’ allegation concerning the retrospective application

of the 1991 Act and to hold that there has been no violation of Article 7 of the Convention.

2. The applicants

26. The applicants contested the Government's assertion that the years 1988 and 1989 should be taken to be the dates of commencement of the offences. They alleged that the Principal Public Prosecutor at the Diyarbakır National Security Court had charged them only with acts committed between 1988 and 1989 since he could not find any evidence indicating their involvement in the organisation between 1989 and the date of their arrest on 2 September 1993. Had the Principal Public Prosecutor charged them with acts committed between 1988 and 1993 he would have indicated this in the bill of indictment and would not have written therein "between 1988 and 1989" as the dates of the offences. In support of their allegations, the applicants submitted four bills of indictment issued by the Principal Public Prosecutor at the Diyarbakır National Security Court, all of which clearly indicated the dates of the offences. The applicants cited by way of example the indictments filed against Nihat Eren (indictment no. 1996/1198), Abit Usluğ and Others (indictment no. 1996/587), Abdullah Kaya and Others (indictment no. 1998/95) and Mehmet Nuri Günana and Mahmut Can (indictment no. 1996/1199) who, like the applicants, were charged with terrorist-type offences.

27. The applicants pointed out that the National Security Court had clearly indicated in its judgment that they had been convicted of offences committed during 1988 and 1989. In this respect, the applicants referred to Article 150 of the Turkish Code of Criminal Procedure which provides that the jurisdiction of the courts is limited by the crimes set forth in the indictment. They contended that the Government cannot extend the indictment so as to cover the period between 1989 and 1993 since they were not engaged in any criminal activity during that period.

The applicants further argued that the Government cannot rely on the statements they had made during their detention in custody with a view to extending the period of their activities as they had retracted those statements in the course of the proceedings before the National Security Court.

28. In sum, the applicants requested the Court to hold that imposition of a prison sentence in application of the 1991 Act to their acts committed in 1988 and 1989 contravened Article 7 of the Convention.

B. The Court's assessment

1. General principles

29. The Court recalls that the guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *S.W. and C.R. v. the United Kingdom*, judgments of 22 November 1995, Series A nos. 335-B and 335-C, pp. 41-42, § 35, and pp. 68-69, § 33, respectively).

30. According to the Court's case-law, Article 7 of the Convention generally embodies the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and prohibits in particular the retrospective application of the criminal law where it is to an accused's detriment (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 22, § 52).

2. Application of the foregoing principles

31. The Court considers that the principle of *nulla poena sine lege* is the only relevant consideration in this case since the applicants maintain that a heavier penalty was imposed on them than the one that was applicable at the time the offence was committed.

32. The Court observes that in the instant case the conviction of the applicants and the imposition of a prison sentence on them on account of the commission of the offences defined in Article 169 of the Turkish Criminal Code are not in dispute. The only question to be determined is whether the 1991 Act was applied to offences committed before the Act came into force so that it constituted an *ex post facto* criminal penalty in breach of Article 7 § 1 of the Convention.

33. The Court notes that the Government maintain that the offence with which the applicants were charged is to be considered a continuing offence under Article 169 of the Turkish Criminal Code (see paragraph 19 above). On that understanding, the Court observes that, by definition, a "continuing offence" is a type of crime committed over a period of time. In its view, when an accused is charged with a continuing offence, the principle of legal certainty requires that the acts which go to make up that offence, and which entail his criminal liability, be clearly set out in the bill of indictment (see, *mutatis mutandis*, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 51, ECHR 1999-II). Furthermore, the decision rendered by the domestic court must also make it clear that the accused's conviction and sentence result

from a finding that the ingredients of a continuing offence have been made out by the prosecution.

34. In this connection, the Court observes that the Principal Public Prosecutor, in his indictment filed with the National Security Court, charged the applicants with offences committed “between 1988 and 1989”. Furthermore, in its judgment of 12 May 1994 the National Security Court indicated that the applicants had been convicted on account of acts committed “in 1988 and 1989”. Nowhere in its reasoned judgment did the National Security Court state that it had found the applicants guilty of any offences committed subsequent to 1989. For the European Court, it would appear to emerge from these considerations that the applicants stood trial in respect of offences allegedly committed by them in or between 1988 and 1989. Accordingly, and contrary to what was suggested by the Government, the Court considers that the years 1988 and 1989 cannot be taken to be the commencement dates of the offences at issue.

35. The Court further notes that, in seeking to substantiate the applicants’ involvement in the PKK up until August 1993, the Government relied on their confession statements made in custody at the Şırnak central gendarmerie command. Furthermore, with reference to the evidence given by a former PKK militant, the Government emphasised that the applicants had continued their activities even after 1989.

However, in the Court’s opinion, the introduction of such evidence of a continuing offence is inconsistent with the very terms of the indictment, which related to the years 1988 and 1989 only. It can reasonably be considered that the applicants prepared their defence in response to the charges defined in the bill of indictment and against the background of the sanction which they risked incurring if found guilty as charged. Furthermore, it does not appear from the National Security Court’s judgment that any offences which they may have committed after 1989 constituted the basis of their conviction. Indeed, the focus of the trial court’s decision would appear to have been on their activities carried out between 1988 and 1989. The Court must also take into account that, as regards other accused charged with continuing offences under the 1991 Act, the bills of indictment were carefully framed in order to indicate the dates of the incriminated acts (see paragraph 26 above).

36. In these circumstances, the Court concludes that the applicants were subjected to the imposition of a heavier sentence under the 1991 Act than the sentence to which they were exposed at the time of the commission of the offence of which they were convicted.

37. Accordingly, there has been a violation of Article 7 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicants did not submit a claim in respect of pecuniary damage. However, they each claimed 25,000 United States dollars (USD) by way of compensation for non-pecuniary damage. They alleged that they had served a further three months’ prison sentence as a result of the violation of their rights under Article 7 § 1. In that connection, they argued that this had substantially affected their private and social life, both financially and in other ways.

40. For the Government, the finding of a violation would constitute adequate just satisfaction for the purposes of Article 41 of the Convention, the allegations being unsubstantiated and the amount claimed being excessive. In this respect, they cautioned against the making of an award which would only constitute a source of unjust enrichment for the applicants.

41. The Court considers that both applicants must have suffered distress which cannot be compensated solely by the Court’s finding of a violation. The Court, having regard to the nature of the violation found in the present case and deciding on an equitable basis, awards each of the applicants USD 7,500 under the head of non-pecuniary damage.

B. Costs and expenses

42. The applicants’ representative sought the reimbursement of 258,000,000 Turkish liras for his costs and expenses (photocopies, translations, telephone, fax and postage fees). He further claimed the sum of USD 6,500 in respect of sixty-five hours of work undertaken in the course of the domestic and Convention proceedings.

43. The Government stated that the amount claimed was exaggerated in comparison with fees earned by Turkish lawyers in the domestic courts and had not been properly justified. While criticising the claim made in respect of the work carried out by the applicants’ representative in the domestic proceedings, the Government argued that claims should only be made for the proceedings before the Convention organs. They further submitted that the applicants had failed to substantiate properly the legal costs and expenses claimed.

44. The Court considers that the applicants failed to a large extent to substantiate their claims. Deciding on an equitable basis and having regard to the criteria laid down in its case-law (see, among many other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316, p. 83, § 77), the Court awards the applicants jointly the sum of USD 3,000 minus the sum of 630 euros received by way of legal aid from the Council of Europe.

C. Default interest

45. The Court considers it appropriate to provide for payment of default interest at the annual rate of 6% since the sums have been awarded in United States dollars.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 7 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
 - (i) to each applicant USD 7,500 (seven thousand five hundred United States dollars) as compensation for non-pecuniary damage;
 - (ii) to both applicants jointly USD 3,000 (three thousand United States dollars) for legal fees minus the sum of EUR 630 (six hundred and thirty euros) received by way of legal aid from the Council of Europe to be converted into United States dollars at the rate applicable at the date of judgment;
 - (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 27 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President