



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

THIRD SECTION

CASE OF MEHDI ZANA v. TURKEY

(Application no. 29851/96)

JUDGMENT

STRASBOURG

6 March 2001

FINAL

06/06/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Mehdi ZANA v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Mr K. TRAJA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 September 2000 and 13 February 2001,

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

PROCEDURE

1. The case originated in an application (no. 29851/96) 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 a Turkish national, Mr Mehdi Zana (“the applicant”), on 1 September 1995.

2. The applicant was represented by Mr Sezgin Tanrikulu, a lawyer practising in Diyarbakır (Turkey). The Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged, in particular, that his conviction constituted an unjustified interference with his right to freedom of expression and that he was denied a fair hearing on account of the presence of a military judge on the bench of the Istanbul State Security Court.

4. The application was allocated to the Third 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 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a decision of 19 September 2000 the Chamber declared the applicant’s complaint under Articles 9 and 10 of the Convention inadmissible and retained his complaint under Article 6 § 1 for examination on the merits.

6. The applicant 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

7. The facts of the case, as submitted by the parties, may be summarised as follows.

8. On 28 June 1992 the applicant participated in a meeting organised by a political party, the People's Labour Party (*Halkın Emek Partisi, HEP*), in Bursa. At this meeting he made a speech on the Kurdish question.

9. The Chief Public Prosecutor at the Istanbul State Security Court instituted criminal proceedings against the applicant charging him with disseminating separatist propaganda against the indivisibility of the State on account of his speech. The charges were brought under section 8 § 1 of the Prevention of Terrorism Act 1991 (hereinafter "the 1991 Act").

10. In the proceedings before the Istanbul State Security Court, the applicant denied the charges and requested his acquittal. He asserted that he had made this speech because he felt responsible for the Kurdish problem.

11. In a judgment dated 14 April 1994, the Istanbul State Security Court found the applicant guilty of an offence under section 8 § 1 of the 1991 Act. It sentenced the applicant to 2 years' imprisonment and a fine of 100,000,000 Turkish Liras (TRL). The court held that the following phrases in the applicant's speech contravened section 8 of the 1991 Act:

"... We know how to die for our cause and we do even die...O Kurds! join hands, give a martyr every day... we will maintain our cause until we achieve it... we are going to stop this oppression and we are going to get our rights with our fists... if the present Government do not say 'stop' to this oppression, we are going to stop it... we have taken an oath not to withdraw, even if only a single warrior remains... Kurdistan is seen on the horizon..."

12. The Istanbul State Security Court considered that the incriminated speech, taken as a whole, amounted to propaganda, including violence, against the indivisible integrity of the State. The court found that the applicant had alleged that the State was guilty of oppression and the infliction of torture. It held that this allegation constituted a clear and present danger since the applicant had given incorrect information about the incidents and the Government's policies in the south-east. The applicant appealed against his conviction.

13. On 31 January 1995 the Court of Cassation upheld the Istanbul State Security Court's judgment. The applicant learned of this decision in July 1995 while he was in prison.

14. Following the amendments made by Law no. 4126 of 27 October 1995 to the 1991 Act, the Istanbul State Security Court *ex officio* re-examined the applicant's case. On 16 February 1996 the court confirmed the applicant's conviction, but reduced the sentence imposed on the applicant. It finally sentenced the applicant to 1 year's imprisonment and a fine of 100,000,000 TRL. The applicant appealed.

15. On 12 January 1998 the Court of Cassation dismissed the applicant's appeal, upholding the State Security Court's reasoning and its assessment of the evidence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. A full description of the relevant domestic law may be found in the *Süreş (No. 1) v. Turkey* judgment ([GC], no. 26682/95, §§ 23-36, ECHR 1999-IV).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that the presence of a military judge on the bench of the Istanbul State Security Court which tried and convicted him meant that he was denied a fair hearing, in breach of Article 6 § 1 of the Convention, the relevant part of which provides:

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

18. The applicant referred to the findings of the Court in its *İncal v. Turkey* judgment of 9 June 1998 (*Reports of Judgments and Decisions* 1998-IV, p. 1547) and alleged that he had not been tried by an independent and impartial tribunal.

19. The Government replied that the rules then in force governing the appointment of military judges to the State Security Courts and the guarantees which they enjoyed in the performance of their judicial functions on the bench were such as to ensure that these courts fully complied with the requirements of independence and impartiality within the meaning of Article 6 § 1. They pointed out that it was an offence under Article 112 of the Military Code for a public official to attempt to influence the performance by a military judge of his judicial functions. Furthermore, the

career assessments of military judges relate only to their non-judicial duties. Military judges have access to their assessment reports and are able to challenge their content before the Supreme Military Administrative Court. When acting in a judicial capacity, a military judge is assessed in exactly the same manner as a civilian judge.

20. The Government argued that the fact that a military judge had sat in the State Security Court had not impaired the fairness of the applicant's trial. Neither the military judge's hierarchical superiors, nor the public authorities which had appointed him to the court had any interest in the proceedings or in the outcome of the case.

21. The Government also impressed upon the Court the need to have particular regard to the security context in which the decision to establish State Security Courts was taken, pursuant to Article 143 of the Constitution. In view of the experience of the armed forces in the anti-terrorism campaign, the authorities had considered it necessary to strengthen these courts by including a military judge in order to provide them with the necessary expertise and knowledge to deal with threats to the security and integrity of the State.

22. The Court reiterates that in its above-mentioned *İncal v. Turkey* judgment of 9 June 1998 (p. 1547) and in its *Çıraklar v. Turkey* judgment of 28 October 1998 (*Reports* 1998-VII, p. 3071), it had to address arguments similar to those raised by the Government in the instant case. In those judgments the Court noted, on the one hand, that the status of military judges sitting as members of State Security Courts did provide some guarantees of independence and impartiality (see the above-mentioned *İncal* judgment, p. 1571, § 65). On the other hand, the Court found that certain aspects of these judges' status made their independence and impartiality questionable (*ibid.* § 68): for example, the fact that they are servicemen who still belong to the army, which in turn takes its orders from the Executive; the fact that they remain subject to military discipline; and the fact that decisions pertaining to their appointment are to a great extent taken by the administrative authorities and the army. The applicant mentioned some of these shortcomings in his observations.

23. As in its *İncal* judgment, the Court considers that its task is not to determine *in abstracto* the necessity for the establishment of State Security Courts in the light of the justifications advanced by the Government. Its task is to ascertain whether the manner in which the Istanbul State Security Court functioned at the material time infringed the applicant's right to a fair hearing, in particular whether, viewed objectively, he had a legitimate reason to fear that the court which tried him lacked independence and impartiality (see the above-mentioned *İncal* judgment, p. 1572, § 70, and the above-mentioned *Çıraklar* judgment, p. 3072, § 38).

As to that question, the Court sees no reason to reach a conclusion different from that in the cases of Mr *İncal* and Mr *Çıraklar*, both of whom,

like the present applicant, were civilians. It is understandable that the applicant – prosecuted in a State Security Court for disseminating propaganda aimed at undermining the national security of the State and public safety – should have been apprehensive about being tried by a bench which included a regular army officer and member of the Military Legal Service. On that account he could legitimately fear that the Istanbul State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality can be regarded as objectively justified. The proceedings in the Court of Cassation were not able to dispel these fears since that court did not have full jurisdiction (see the above-mentioned İncal judgment, p.1573, § 72 *in fine*).

Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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.”

25. When submitting his application, the applicant claimed in general that non-pecuniary damage, costs and expenses be awarded to him. However, he did not give any particulars of these claims, as required by Rule 60 of the Rules of Court, although he was requested to do so (see, among other authorities, the *Motière v. France* judgment of 5 December 2000, no. 39615/98, § 26, ECHR 2000).

26. The Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see the above-mentioned İncal judgment, p. 1575, § 82, and the above-mentioned Çıraklar judgment, p. 3074, § 45).

27. As to the legal costs and expenses, in the absence of any quantified claim, the Court makes no award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that this finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

3. *Dismisses* the applicant's claims for other just satisfaction.

Done in English, and notified in writing on 6 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President