



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

THIRD SECTION

CASE OF TAKAK v. TURKEY

(Application no. 30452/96)

JUDGMENT

STRASBOURG

1 April 2004

FINAL

07/07/2004

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 Takak v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,
Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 11 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 30452/96) 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, Ms Yüksel Takak (“the applicant”), on 15 November 1995.

2. The applicant was represented by Mr İ. Kavak, a lawyer practising in Izmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicant alleged, in particular, that she was denied a fair hearing on account of the presence of a military judge on the bench of the Izmir State Security Court which tried and convicted her and the limited jurisdiction of this court. She further alleged that her conviction had been based on her statements which she had withdrawn and that she had not been allowed to examine a witness against her.

4. The application was 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 application was 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.

6. By a decision of 18 May 1999 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1966 and lives in Izmir, Turkey.

10. On 11 March 1994 the applicant was taken into custody by the officers from the Izmir Security Directorate Anti-Terror branch on suspicion of aiding and abetting an illegal terrorist organisation, the PKK.

11. On 17 March 1994 the applicant was brought before the judge at the Izmir State Security Court. Before the court she pleaded not guilty and maintained that she did not accept the statements that she had made at the Security Directorate. She further denied the testimony of a witness, A.A., against her. Subsequently, the court ordered her release on account of insufficient evidence to remand her in custody.

12. On 7 April 1994 the public prosecutor at the Izmir State Security Court filed an indictment with the court charging the applicant under Article 169 of the Criminal Code and Article 5 of Law no. 3713 (the Prevention of Terrorism Act 1991 as amended) with aiding and abetting the PKK.

13. On 24 November 1994 the Izmir State Security Court convicted the applicant as charged and sentenced her to three years and nine months' imprisonment. She was further debarred from public service for three years. The court based its judgment on the following evidence: some ammunition found by the police, various weapons and the ballistics reports confirming the applicant's use thereof, invoices, a notebook used for recording expenditures of the PKK, photos of the applicant taken with some PKK militants, the statements made by the applicant at the Security Directorate, the statements made by S.A., A.A., M.T. and F.A. at the Security Directorate, the Public Prosecutor's office and before the court and finally the testimonies of T.T., N.F., A.O., H.K. and B.O., who were being tried by the same court for charges with other offences.

14. On 25 September 1995 the Court of Cassation upheld the Izmir State Security Court's judgment of 24 November 1994.

15. On 1 November 1995 the Izmir chief public prosecutor suspended the execution of the applicant's sentence until 28 April 1996 as she had given birth.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The Court refers to the overview of the domestic law derived from previous submissions in other cases, in particular *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002) and *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complains under Article 6 § 1 of the Convention that she was denied a fair hearing by an independent and impartial tribunal on account of the presence of a military judge on the bench of the Izmir State Security Court which tried and convicted her. She further complains under the same heading that the Izmir State Security Court had limited jurisdiction and that it based its judgment on statements made by her which she had withdrawn. She finally submits under Article 6 § 3 (d) of the Convention that she was denied the right to examine one of the witnesses against her.

18. The Court notes that it examined similar cases in the past and found a violation of Article 6 § 1 (see *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

19. The Court sees no reason to come to a conclusion different from that reached in these cases. It is reasonable that the applicant, who was prosecuted in a State Security Court for aiding and abetting an illegal organisation, 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, she could legitimately fear that the Izmir 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 the State Security Court's lack of independence and impartiality can be regarded as objectively justified (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1573, § 72 *in fine*).

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

21. Having regard to its finding that the applicant's right to a fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine the applicant's other complaints under Article 6 §§ 1 and 3 (d) (see *Incal*, cited above, § 74, and *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII, § 45).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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. Damages

23. The applicant claimed a total of 225,000 pounds sterling (GBP) for pecuniary and non-pecuniary damage, equivalent to 326,949 euros (EUR).

24. The Government did not submit any observations on these claims.

25. Regarding the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of the proceedings before the State Security Court might have been had the violation of the Convention not occurred (see *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, § 85). Moreover, the applicant's claim in respect of pecuniary damage was not borne out by any evidence. It is therefore inappropriate to award the applicant compensation for pecuniary damage.

26. With regard to non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Çıraklar*, cited above, § 49).

27. Where the Court finds that an applicant has been convicted by a tribunal which is not independent and impartial within the meaning of Article 6 § 1, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant is granted in due course a retrial by an independent and impartial tribunal (see *Gençel*, cited above, § 27).

B. Costs and expenses

28. The applicant claimed a total of GBP 38,500, equivalent to EUR 55,944.70, for costs and expenses incurred in the proceedings before the domestic authorities and before the Strasbourg institutions.

29. The Government did not make any submissions on these claims.

30. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, as a recent authority, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

31. Making its own estimate based on the information available, the Court awards the applicant EUR 3,000 in respect of costs and expenses.

C. Default interest

32. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint relating to the independence and impartiality of the Izmir State Security Court;
2. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 of the Convention;
3. *Holds* that this finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (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 1 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President