



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

FIRST SECTION

CASE OF MURAT KILIÇ v. TURKEY

(Application no. 40498/98)

JUDGMENT

STRASBOURG

30 September 2004

FINAL

30/12/2004

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 Murat Kılıç v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr R. TÜRMEK,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 July 2003 and on 9 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 40498/98) 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 Murat Kılıç (“the applicant”), on 7 March 1998.

2. The applicant, who had been granted legal aid, was represented by Mr S. Kaya, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that he had been denied a fair hearing by an independent and impartial tribunal due to the presence of a military judge on the bench of the Ankara State Security Court which tried and convicted him. He maintained under Articles 9 and 10 of the Convention that he had been convicted on account of his political opinions.

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

7. By a decision of 8 July 2003, the Court declared the application partly admissible. It retained the applicant's complaint concerning the alleged lack of independence and impartiality of the Ankara State Security Court which tried and convicted him and declared inadmissible the remainder of his complaints.

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 1964 and lives in Ankara.

10. On 18 October 1992 the applicant was arrested by police officers from the Ankara Security Directorate following a search conducted in his house.

11. On 2 November 1992 the public prosecutor attached to the Ankara State Security Court laid charges against the applicant and six other persons for having formed an illegal organisation ("*Partiye Rizgariye Kurdistan*": hereinafter "*PRK*") whose aim was to undermine the territorial integrity of the State by illegal means. The applicant and his co-accused were also charged with distributing illegal leaflets and carrying identification cards and driving licences belonging to third parties.

12. The public prosecutor requested the court to convict the applicant and his co-accused under Article 125 of the Criminal Code with reference to Articles 171 § 1, 350 § 2 and 536 §§ 2 and 3 of the same Code as well as Article 5 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991). The public prosecutor relied on the leaflets, the internal regulations of the PRK as well as the latter's political programme and flag, all of which were seized during the search of the applicant's and his co-accused's houses.

13. On 7 November 1996 the Ankara State Security Court found the applicant and four of his co-accused guilty of an offence under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act. The search of their houses had uncovered the internal regulations of the party whose aim was to establish an independent Kurdish State on the territory of the Turkish State through dissemination of propaganda. The court also noted that the aim of the party was to set up by means of force an independent socialist and united State of Kurdistan within the territories of Iran, Iraq and Syria.

14. The court sentenced the applicant and four of his co-accused to twelve years and six months' imprisonment and debarred them from public service indefinitely. The applicant appealed.

15. On 7 October 1997 the Court of Cassation dismissed the applicant's appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law at the material time may be found in *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV; *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII; *Özel v. Turkey*, no. 42739/98, 7 November 2002, and *Gençel v. Turkey*, no. 53431/99, 23 October 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that he had been denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Ankara State Security Court which tried and convicted him. He invoked Article 6 § 1 of the Convention which, insofar as relevant, reads as follows:

"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 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.

19. The Court notes that it has examined similar grievances in the past and has found a violation of Article 6 § 1 (see, among many other authorities, *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003). It sees no reason to reach a different conclusion in the instant case. It is reasonable that the applicant who was prosecuted in a State Security Court for having been involved in 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, he could legitimately fear that the Ankara 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*, cited above, p. 1573, § 72 *in fine*).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed a total of 296,000,000 euros (EUR) for pecuniary and non-pecuniary damage.

23. The Government contested the applicant's claim. They maintained that the sums claimed were excessive and unjustified.

24. 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 has not been substantiated by any evidence whatsoever. It therefore makes no award under this head.

25. 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).

26. 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

27. The applicant claimed a total of EUR 12,500 for costs and expenses incurred in the proceedings before the domestic authorities and before the Strasbourg institutions.

28. The Government contested the applicant's claim. They submitted that the claim in respect of costs and expenses had not been duly documented.

29. 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 *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

30. Making its own estimate based on the information available and having regard to the criteria laid down in its case-law (see, among other authorities, *Uzunhasanoğlu v. Turkey*, no. 35070/97, § 33, 20 April 2004), the Court considers it reasonable to award the applicant EUR 3,000 under this head less the sum of EUR 630 received in legal aid from the Council of Europe.

C. Default interest

31. 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;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
3. *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, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, less EUR 630 (six hundred thirty euros) granted by way of legal aid, 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;

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

Done in English, and notified in writing on 30 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President