



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

THIRD SECTION

**CASE OF EPÖZDEMİR v. TURKEY**

*(Application no. 43926/98)*

JUDGMENT

STRASBOURG

28 October 2004

**FINAL**

***28/01/2005***

*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 Epözdemir v. Turkey,**

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr R. TÜRMEŖ,

Mr B. ZUPANČIČ,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mrs A. GYULUMYAN, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 7 October 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 43926/98) 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 Nametullah Epözdemir (“the applicant”), on 11 August 1998.

2. The applicant was represented by Mr S. Okçuoğlu, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 14 May 2002 the Court declared the application partly inadmissible and decided to communicate the complaints concerning Articles 6 and 13 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it further decided to examine the merits of the application at the same time as its admissibility.

**THE FACTS**

4. The applicant, who was born in 1959, is currently detained in Muş Prison.

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

6. On 7 November 1993 the applicant was taken into custody by police officers from the Anti-Terrorism Department of the Tatvan Security Directorate on suspicion of his membership to an illegal organisation, namely the PKK.

7. On 25 November 1993 the applicant was brought before the Tatvan public prosecutor and the investigating judge at the Tatvan Magistrate's Court. The same day, the investigating judge ordered that the applicant be placed in detention on remand.

8. In an indictment dated 31 December 1993, the public prosecutor at the Diyarbakır State Security Court initiated criminal proceedings against the applicant. He charged him with being member of an armed gang under Article 168 of the Criminal Code.

9. On 13 March 1995 the Diyarbakır State Security Court, composed of two civilian judges and a military judge, convicted the applicant as charged and sentenced him to twelve years and six months' imprisonment.

10. The applicant appealed. On 17 November 1995 the Court of Cassation quashed the decision of the Diyarbakır State Security Court for procedural reasons.

11. On 18 November 1996 the Diyarbakır State Security Court applied the decision of the Court of Cassation and sentenced the applicant to twelve years and six months' imprisonment for membership to an illegal organisation.

12. On 18 March 1998 the Court of Cassation dismissed the applicant's appeal, upholding the Diyarbakır State Security Court's reasoning and assessment of evidence.

## II. RELEVANT DOMESTIC LAW

13. A full description of the domestic law may be found in *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

14. The applicant submitted that he had been tried and convicted by the Diyarbakır State Security Court which was neither independent nor impartial. He further complained that he had been deprived of his right to the assistance of a lawyer in police custody, before the public prosecutor and the judge. In this respect he invoked Article 6 §§ 1 and 3 (c) and Article 13 of the Convention.

15. The Court finds it appropriate to examine the applicant's complaints under Article 6 of the Convention. It accordingly does not find it necessary

to determine whether there has been a violation of Article 13 of the Convention.

### A. Admissibility

16. The Government argued under Article 35 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Diyarbakır State Security Court must be rejected for failure to comply with the six-month rule. In this respect, they maintained that as the applicant was complaining of the lack of independence and impartiality of the Diyarbakır State Security Court, he should have lodged his application with the Court within six months of the date on which that court rendered its judgment, namely 18 November 1996.

17. The Court reiterates that it has already examined similar preliminary objections of the Government in respect of the non-compliance with the six months rule in the past and has rejected them (see *Özdemir v. Turkey*, no. 59659/00, § 29, 6 February 2003 and *Doğan and Keser v. Turkey*, nos. 50193/99 and 50197/99, § 17, 24 June 2004). The Court finds no particular circumstances in the instance case which would require it to depart from its findings in the above-mentioned cases.

18. Accordingly, the Court rejects the Government's preliminary objection.

19. In the light of its established case law (see amongst many authorities, *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII), and in view of the materials submitted to it, the Court considers that the present case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

### B. Merits

#### *1. As to the independence and impartiality of the Diyarbakır State Security Court*

20. The Government maintained that the state security courts had been established by law to deal with threats to the security and integrity of the State. They submitted that in the instant case there was no basis to find that the applicant could have any legitimate doubts about the independence of the Diyarbakır State Security Court. The Government further referred to the

constitutional amendment of 1999 whereby military judges could no longer sit on state security courts.

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

22. The Court sees no reason to reach a different conclusion in this case. It is understandable that the applicant who was prosecuted in a State Security Court for being a member of 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 Diyarbakır 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* 1998-IV, p. 1573, § 72 *in fine*).

23. In the light of the foregoing the Court finds that there has been a violation of Article 6 § 1 of the Convention in this respect.

*2. As to the remainder of the complaints submitted under Article 6*

24. 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 complaints under Article 6 § 3 (c) of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant requested 118,743 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

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

28. On the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. Moreover, the applicant's

claims in respect of pecuniary damage are not supported by any evidence whatsoever. The Court can therefore not allow them.

29. The Court further considers that the finding of a violation of Article 6 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant in this respect (see *Incal*, cited above, p. 1575, § 82, and *Çiraklar*, cited above, § 45).

30. 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 (*Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

### **B. Costs and expenses**

31. The applicant also claimed EUR 6,113 for costs and expenses.

32. The Government did not make any comments on this point.

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

34. 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, *Özdemir*, cited above, § 49 and *Aksaç v. Turkey*, no. 41956/98, § 31, 15 July 2004), the Court awards the applicant EUR 3,000 in respect of costs and expenses.

### **C. Default interest**

35. 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. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to consider the applicant's complaints under Article 6 § 3 (c) of the Convention;

4. *Holds* that the finding of a violation of the Convention constitutes in itself sufficient just satisfaction for non-pecuniary damage;
5. *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 Turkish Liras at the rate applicable at the date of the settlement and free of any charge that may be payable;
  - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Georg RESS  
President