



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

SECOND SECTION

CASE OF KILINÇ v. TURKEY

(Application no. 48083/99)

JUDGMENT

STRASBOURG

15 March 2005

FINAL

15/06/2005

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 Kılınç v. Turkey,

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

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

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 22 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 48083/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Mükremin Kılınç (“the applicant”), on 27 March 1999.

2. The applicant was represented by Mr H. Küçüksoy, a lawyer practising in Ankara. The Turkish Government did not designate an Agent for the purpose of the proceedings before the Court.

3. On 27 April 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the applicant’s right to a fair trial by an independent and impartial tribunal and the failure to notify him of the public prosecutor’s submissions on his appeal to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant, who was born in 1959, lives in Ankara.

5. The applicant was the Deputy Mayor of the Sincan District in Ankara at the time of the events. In his capacity as the deputy mayor, he was responsible for the activities of the Culture and Education Department of the

Sincan District Council. In January 1997, the Culture and Education Department prepared a thirty-day programme for the month of Ramadan. The draft programme was submitted to the applicant for his approval. After consulting the mayor, the applicant authorised the organising committee to begin the necessary preparations.

6. One of the events foreseen for 31 January 1997 was called the “Jerusalem Night”. This event was announced months in advance and representatives of several embassies as well as several important personalities living in the district were invited. The hall was decorated with posters of martyrs who had given their lives for the liberation of Jerusalem. A five-minute play was also written for the evening. The play took the form of a conversation between a father and his son about life in Palestine and the struggle of the Palestinian people. The mayor of Sincan and the Ambassador to Iran made speeches before the play began.

7. On 6 February 1997 the applicant was taken into police custody. He was accused of having disseminated propaganda in support of an armed, illegal organisation, namely the Hezbollah.

8. In his statement at the police station, the applicant denied being involved in any illegal organisation.

9. On 13 February 1997 the applicant was brought before the public prosecutor. During his questioning, he repeated the statements he had made at the police station.

10. On the same day the applicant was brought before the investigating judge attached to the Ankara State Security Court and was remanded in custody.

11. In an indictment dated 7 March 1997, the public prosecutor attached to the Ankara State Security Court initiated criminal proceedings against the applicant. It was alleged that he had disseminated propaganda in support of an armed, illegal organisation. The prosecution therefore called for the applicant to be sentenced pursuant to Article 169 of the Turkish Criminal Code and Article 5 of the Prevention of Terrorism Act.

12. On 15 October 1997 the Ankara State Security Court, which was composed of three judges including a military judge, concluded that the applicant had aided and abetted a terrorist organisation by engaging in propaganda in support thereof. It found the applicant guilty as charged, sentenced him to three years and nine months’ imprisonment and debarred him from public service for three years.

13. The applicant appealed to the Court of Cassation. The Chief Public Prosecutor at the Court of Cassation submitted his written opinion on the merits of the appeal. The opinion was not notified to the applicant, but was read out during the hearing before the Court of Cassation.

14. On 21 September 1998 the Court of Cassation dismissed the applicant’s appeal, upholding the Ankara State Security Court’s assessment of the evidence and its reasons for rejecting the applicant’s defence.

15. On 7 December 1998 the chief public prosecutor attached to the Court of Cassation rejected the applicant's request for rectification.

II. THE RELEVANT DOMESTIC LAW

16. 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 ARTICLE 6 OF THE CONVENTION

17. The applicant complained in the first place that he had not received a fair trial by an independent and impartial tribunal due to the presence of a military judge on the bench of the Ankara State Security Court. The applicant further maintained that the principle of equality of arms had been violated since he had not been notified of the public prosecutor's observations at the appeal stage. In this connection, he invoked Article 6 of the Convention, which in so far as relevant reads as follows:

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

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence; ...”

A. Admissibility

18. The Government argued under Article 35 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Ankara State Security Court must be rejected for non-exhaustion of domestic remedies. They maintained that the applicant had not invoked this complaint before the domestic courts. In this respect, they referred to the case-law of the Court (in particular *Ahmet Sadık v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V).

19. The Court reiterates that it has already examined similar preliminary objections of the Government in respect of the non-exhaustion of domestic remedies (see *Vural v. Turkey*, no. 56007/00, § 22, 21 December 2004,

Çolak v. Turkey (no. 1), no. 52898/99, § 24, 15 July 2004, and *Özel*, cited above, § 25). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases.

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

21. In the light of its established case-law (see amongst many authorities, *Çiraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII), and in view of the materials submitted to it, the Court considers that the 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 remainder of 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 Ankara State Security Court

22. 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 Ankara State Security Court. The Government further referred to the constitutional amendment of 1999 whereby military judges could no longer sit on such courts. Finally, they stated that the State Security Courts had been abolished as of 2004.

23. 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*, no. 59659/00, §§ 35-36, 6 February 2003).

24. 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 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, 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 fear 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*).

25. 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

26. The Government maintained that the written opinion of the Chief Public Prosecutor had been submitted to the Court of Cassation and it was read out to the applicant's representative during the hearing. The Government argued that, before the hearing, the applicant's representative had sufficient time to find out about the submissions made by the Chief Public Prosecutor and to submit additional grounds of appeal. The Government also referred to the legislative amendment of 2003, which regulated the *ex officio* notification of the written opinion of the Chief Public Prosecutor at the Court of Cassation.

27. 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 remaining complaint under Article 6 § 3 of the Convention (see *Çıraklar*, cited above, § 45, *Durmaz and Others v. Turkey*, nos. 46506/99, 46569/99, 46570/99 and 46939/99, §§ 22-23, 14 October 2004, and *Işık v. Turkey*, no. 44057/98, §§ 39-40, 24 June 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant requested the Court to award him 200,000 Euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage.

30. The Government submitted that these claims were excessive and unacceptable.

31. 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 cannot therefore allow them.

32. 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 *Çıraklar*, cited above, § 45).

33. 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

34. The applicant did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court.

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 as regards the complaint relating to the independence and impartiality of the Ankara State Security Court;
3. *Holds* that there is no need to examine the remaining complaint submitted under Article 6 § 3 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President