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

SECOND SECTION

CASE OF ŞİRİN v. TURKEY

(Application no. 47328/99)

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 Şirin 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. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *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. 47328/99) 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 Nurettin Şirin ("the applicant"), on 15 March 1999.

2. The applicant was represented by Mr M. Arani, a lawyer practising in Middlesex (United Kingdom). The Turkish Government ("the 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 the applicant 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 1964, resides in Istanbul.

5. On 31 January 1997 the applicant made a speech about the liberation movement in Palestine and praised the Muslim leaders who worked for the

liberation of Jerusalem during a meeting which was organised by the Sincan District Council in Ankara.

6. On 6 February 1997 the applicant was taken into police custody. In his statement, he explained that he supported the Iranian regime and that he longed for a regime that was based on the Koran.

7. On 13 February 1997 the applicant was questioned by the public prosecutor attached to the Ankara State Security Court. During his questioning by the prosecutor, the applicant repeated his police statement. On the same day the applicant was brought before the investigating judge attached to the Ankara State Security Court and he was subsequently placed in detention on remand.

8. In an indictment dated 7 March 1997, the Ankara State Security Court public prosecutor initiated criminal proceedings against the applicant.

9. Before the Ankara State Security Court, which was composed of three judges including a military judge, the applicant contested the charges against him.

10. On 15 October 1997 the Ankara State Security Court convicted the applicant of being a member of an illegal organisation and sentenced him to seventeen years and six months' imprisonment pursuant to Article 168 of the Criminal Code.

11. On 6 January 1998 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.

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

13. On 24 December 1998 the Chief Public Prosecutor attached to the Court of Cassation rejected the applicant's request for rectification.

II. THE RELEVANT DOMESTIC LAW

14. 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

15. 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

16. 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 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 Ankara 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 15 October 1997.

17. The Court reiterates that it has already examined similar preliminary objections of the Government in respect of the non-compliance with the six-month 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 instant 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 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

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 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.

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*, cited above, §§ 35-36).

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 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*).

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. The Government submitted that the written opinion of the Chief Public Prosecutor at the Court of Cassation generally took the form of a one-page document, which only contained practical information concerning the case and briefly stated whether the judgment of the first-instance court should be upheld or quashed. They 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.

25. 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 and *Durmaz and Others v. Turkey*, nos. 46506/99, 46569/99, 46570/99 and 46939/99, §§ 22-23, 14 October 2004).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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."

27. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

28. In the instant case, on 27 September 2004 the Court invited the applicant to submit his claims for just satisfaction. Upon his request, the Court granted an extension of time until 29 November 2004 and the applicant was informed that no further extension would be granted to him after that date. However, he did not submit any such claims within the specified time-limit.

29. In view of the above, the Court makes no award under Article 41 of the Convention (see *Ormancı and Others v. Turkey*, no. 43647/98, §§ 48-51, 21 December 2004, and *Pravednaya v. Russia*, no. 69529/01, §§ 43-46, 18 November 2004).

30. Even though the applicant submits no claims for just satisfaction, 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).

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.

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