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

THIRD SECTION

CASE OF TÖRE v. TURKEY

(Application no. 48095/99)

JUDGMENT

STRASBOURG

14 April 2005

FINAL

14/07/2005

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 Töre v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 24 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 48095/99) 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, Nazif Töre (“the applicant”), on 17 April 1999.

2. The applicant was represented by Madame E. Çıtak, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 29 April 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicant's right to a fair trial by an independent and impartial tribunal 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.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed Third Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Istanbul.

6. In 1988 the applicant was convicted of membership in an illegal organisation, namely the Marxist-Leninist Communist Party. On 15 April 1991 he was conditionally released from prison.

7. On 16 March 1996 the applicant was arrested and taken into custody by the police. On 9 April 1996 the applicant was interrogated by the police officers at the Tunceli Security Directorate.

8. On 9 April 1996 the Malatya State Security Court ordered his detention on remand.

9. On 22 April 1996 the public prosecutor at the Malatya State Security Court filed an indictment with the latter, accusing the applicant of membership in an illegal armed organisation, namely the Marxist-Leninist Communist Party. The public prosecutor requested that the applicant be convicted and sentenced under Article 146 § 1 of the Criminal Code and Section 5 of Law no. 3713.

10. In the meantime on 7 May 1996 the public prosecutor at the Istanbul State Security Court filed an indictment with the latter accusing the applicant of being an accessory to a bank robbery and murder of a clerk on 18 May 1992. On 26 December 1996 the two cases were joined and the criminal proceedings against the applicant continued before the Malatya State Security Court.

11. On 16 December 1997 the Malatya State Security Court, composed of two civilian judges and a military judge, convicted the applicant as charged and sentenced him to life imprisonment.

12. On 30 November 1998 the Court of Cassation upheld the judgment of the Malatya State Security Court without conducting a hearing since the applicant's lawyer was absent without justification.

13. On 10 October 2002 the applicant's representative informed the Court that the applicant was released from prison due to ill-health pursuant to Article 399 of the Criminal Procedure Code. Accordingly, the applicant was imprisoned, in total, for about six years and six months.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *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

15. The applicant submitted that he had been tried and convicted by the Malatya 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 and that the written opinion of the principal public prosecutor to the Court of Cassation was never served on him, thus depriving him of the opportunity to put forward his counter-arguments. He relied on Article 6 §§ 1 and 3 (c) 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 Malatya 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 Malatya 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.

17. The Court reiterates that it has already examined in several cases similar preliminary objections of the Government in respect of the non-compliance with the six months' rule 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 case raise 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. Independence and impartiality of the State Security Court

20. The Court has examined a large number of cases raising similar issues to those in the present case and found a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir*, cited above, §§ 35-36).

21. As to the instant case, the Court considers that the Government have not submitted any facts or arguments capable of leading to a different conclusion. It considers it understandable that the applicant – prosecuted in a State Security Court for offences relating to "national security" – should have been apprehensive about being tried by a bench which included a regular army officer, who was a member of the Military Legal Service. On that account they could legitimately fear that the State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. Consequently, the applicant's doubts about that court's independence and impartiality may be regarded as objectively justified (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1568, § 72 *in fine*).

22. In conclusion, the Court considers that the State Security Court which tried and convicted the applicant was not an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. Accordingly, there has been a violation of this provision.

2. Fairness of the proceedings

23. Having regard to its finding of a violation of applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 of the Convention relating to the fairness of the proceedings before the domestic courts (see, among other authorities, *Incal,* cited above, § 74, and *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage. He also requested an amount of compensation in respect of pecuniary damage. He left the determination of this amount to the discretion of the Court.

26. The Government contested those claims.

27. As regards the alleged pecuniary damage sustained by the applicant, the Court notes that the applicant has not produced any receipt or documents in support of his claim. The Court accordingly dismisses this claim.

28. 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).

29. Where the Court finds that an applicant was convicted by a tribunal which was 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 a prompt retrial by an independent and impartial tribunal (*Gençel*, cited above, § 27).

B. Costs and expenses

30. The applicant did not submit any receipts or invoices indicating the costs and expenses he had incurred before the domestic proceedings and the Court. He left it to the Court's discretion to asses the appropriate amount.

31. The Government maintained that only actually incurred expenses can be reimbursed. In this connection, they submitted that all costs and expenses must be documented by the applicant or his representative.

32. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

33. 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 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 Malatya State Security Court;

3. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 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. *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 2,000 (two thousand euros) in respect of costs and expenses to be converted into new 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 14 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Boštjan M. ZUPANČIČ
Registrar President