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

FOURTH SECTION

CASE OF KARAKURT v. TURKEY

(Application no. 45718/99)

JUDGMENT

STRASBOURG

20 September 2005

FINAL

15/02/2006

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 Karakurt v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 45718/99) 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 İlhan Karakurt ("the applicant"), on 24 August 1998.

2. The applicant was represented by Mr A. Erdoğan, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. On 29 January 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the fairness of the proceedings against the applicant 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Turkey.

5. On 23 May 1995 the applicant was taken into custody by police officers from the Antalya Security Directorate on suspicion of membership of an illegal organisation, the TDKP/GKB (*Turkish Revolutionary*

Communist Party / Young Communist Union). He was subsequently taken to the Antalya Security Directorate Building, where he was interrogated. During his police interrogation the applicant signed a statement. He claims to have been subjected to pressure and ill-treatment when signing the document.

6. On 28 May 1995 the applicant was brought before a judge who ordered his detention on remand.

7. On 27 June 1995 the public prosecutor at the Izmir State Security Court filed an indictment charging the applicant under Article 168 § 2 of the Criminal Code with membership of the TDKP/GKB.

8. On 18 April 1996 the Izmir State Security Court convicted the applicant as charged and sentenced him to 12 years and 6 months' imprisonment. The court further debarred the applicant from working in the civil service.

9. On 13 October 1997 the applicant appealed.

10. On 2 February 1998 the Court of Cassation dismissed the applicant's appeal upholding the Izmir State Security Court's judgment. The decision of the Court of Cassation was pronounced in the absence of the applicant and his lawyer and it was not notified to them.

11. On 26 February 1998 the decision of the Court of Cassation was deposited with the registry of the Izmir State Security Court.

12. With a letter dated 23 June 2005, the applicant's representative informed the Court that the applicant had been conditionally released from prison on 5 October 2004 after having served three quarters of his sentence.

II. RELEVANT DOMESTIC LAW

13. 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

14. The applicant submitted 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 Izmir State Security Court which tried and convicted him. 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 and that the written observation of the chief public prosecutor at the Court of Cassation on the merits of his appeal was not served on him. He finally contended that that the decision of the Court of Cassation had not been notified to him or to his lawyer. He invoked Article 6 §§ 1 and 3 of the Convention.

A. Admissibility

15. The Government argued under Article 35 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Izmir 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 Izmir 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 April 1996.

16. 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 *Epözdemir v. Turkey*, no. 43926/98, § 17, 28 October 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.

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

18. In the light of its established case law (see, amongst many authorities, *Çıraklar*, cited above), 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 Izmir State Security Court*

19. 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 Izmir State Security Court. The Government further referred to the constitutional amendment of 1999 whereby military judges could no longer sit on state security courts.

20. 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).

21. The Court 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 membership 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 Izmir 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, § 72 *in fine)*.

22. 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 of the Convention*

23. Having regard to its finding that the applicant's right to fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine the applicant's other complaints under Article 6 of the Convention (see *Çıraklar*, cited above, § 45).

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 10,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government contested the applicant's claim.

27. 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).

B. Costs and expenses

28. The applicant also claimed EUR 4,000 for the costs and expenses.

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

30. 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).

31. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant the sum of EUR 2,000.

C. Default interest

32. 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 of the Convention as regards the complaint relating to the independence and impartiality of the Izmir 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 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President