



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

SECOND SECTION

CASE OF SEVGİN AND İNCE v. TURKEY

(Application no. 46262/99)

JUDGMENT

STRASBOURG

20 September 2005

FINAL

20/12/2005

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 Sevgin and İnce v. Turkey,

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

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

Mr A.B. BAKA,

Mr R. TÜRMEK,

Mr K. JUNGWIERT,

Mr M. UGREKHEDIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *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. 46262/99) 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 two Turkish nationals, Mr Hayrettin Sevgin and Mr Cevat İnce ("the applicants"), on 4 December 1998.

2. The applicants were represented by Mr M Beştaş, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 14 May 2002 the Court declared the application partly inadmissible and decided to communicate the complaint under Articles 3, 5 §§ 3, 4 and 5, 6 §§ 1, 2 and 3 (d), 13 and 14 of the Convention 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

4. The applicants were born in 1960 and 1967 respectively and live in Diyarbakır.

1. Regarding the first applicant

5. On 16 November 1993 the applicant was taken into custody by the security forces at the Sağırsu Gendarmerie Command.

6. In a report drafted by the gendarmes and signed by the applicant on the same day, it was stated that he was taken into custody on the basis of information contained in a document found on a PKK¹ terrorist.

7. In his statement taken by the gendarmes on 30 November 1993 the applicant confessed in detail to his involvement in the activities of the PKK.

8. On 1 December 1993 the applicant and five others were examined by a doctor at the Siirt Forensic Department, who concluded there were no traces of blows on their bodies.

9. Later on the same day, the applicant was first brought before the Siirt Public Prosecutor then before the judge at the Siirt Magistrates Court where he refuted his statements dated 30 November 1993 and he contested his involvement in the activities of the PKK. He confessed to having possessed a Kalashnikov rifle without a permit. The court ordered his detention on remand.

10. In his petition dated 2 December 1993 filed with the Siirt Assize Court, the applicant alleged that he had been severely tortured for eighteen days while in police custody. He stated that he had been told to strip, blindfolded, severely beaten and strung up by his arms. Moreover, he objected to the court's decision to detain him on remand.

11. On an unspecified date the Siirt Public Prosecutor issued a decision of non-jurisdiction as the charges against the applicant fell within the competence of the State Security Courts.

12. On 21 December 1993 the Public Prosecutor at the Diyarbakır State Security Court filed a bill of indictment charging the applicant with engaging in acts aimed at the separation of a part of the territory of the State, under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act.

13. At the hearing held on 24 February 1994, the applicant denied the allegations against him and claimed that he had been forced to sign the statements drafted in police custody. The court refused the applicant's request for release pending trial, in view of the state of the evidence and the nature of the offence of which he was accused. It further decided to join the applicant's case to the second applicant's case, as they raised similar issues.

2. Regarding the second applicant

14. On 24 October 1993 the applicant was taken into custody by the security forces at the Siirt Gendarmerie Command. According to the arrest report drafted by the gendarmes and signed by the applicant, he was taken into custody in the village of Koçlu in the course of an investigation concerning the PKK.

15. On 26 October 1993 the applicant took the police officers of the Prevention of Terrorism Department of the Siirt Security Directorate to

¹ The Kurdistan Workers' Party

where he was hiding weaponry, namely a Kalashnikov rifle, a hand grenade and bullets. The police officers later drafted an on-site inspection report, describing the location of the hideout and the weapons found there.

16. In his statement taken by the gendarmes on 3 November 1993, the applicant confessed in detail to his involvement in the activities of the PKK.

17. On 5 November 1993 the applicant and six other suspects were taken to the Siirt Forensic Department for an examination. According to the medical report drafted on the same date, no traces of blows were found on the applicant's body.

18. On the same day, the applicant was brought before the Siirt Public Prosecutor where he accepted having possessed a rifle, a hand grenade and bullets, but denied having participated in the activities of the PKK. Later he was brought before the Siirt Magistrates Court where he reiterated that he had no involvement in the activities of the PKK. The court ordered his detention on remand.

19. In a petition dated 30 November 1993 filed with the Siirt Assize Court, the applicant refuted all the charges brought against him and requested to be released. He alleged that while he was held in police custody, he had had to accept all the allegations against him as he had been severely tortured. Moreover, he maintained that, as the police officers had threatened him, he was afraid to complain about these acts before the public prosecutor and the judge at the criminal court.

20. On an unspecified date, the Siirt Public Prosecutor issued a decision of lack of jurisdiction as the charges against the applicant fell within the competence of the State Security Courts.

21. On 6 December 1993 the public prosecutor filed a bill of indictment with the Diyarbakır State Security Court, accusing the applicant and six others of having engaged in acts aimed at the separation of a part of the territory of the State. The public prosecutor requested that the applicant be convicted and sentenced under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act.

3. Further criminal proceedings against the applicants

22. On 24 March 1994, upon the request of the judge at the Diyarbakır State Security Court, the Siirt Assize Court took the statements of eight police officers from the Prevention of Terrorism Department of the Siirt Security Directorate, who had questioned the second applicant and had drafted the on-site inspection report. The police officers described the course of events during the on-site inspection. They also maintained that no pressure had been inflicted on the accused.

23. At the hearing of 29 March 1994, the applicants were not present before the Diyarbakır State Security Court. It therefore issued summonses to them for the next hearing, scheduled for 10 May 1994. The court requested that a ballistic examination be carried out by the Diyarbakır Forensic

Institute concerning the rifle found in the possession of the second applicant. It continued the applicants' remand in custody pending trial, but released four other accused persons.

24. At the hearing of 10 May 1994, some of the accused, including the applicants, were present in court. The statements of the police officers who had signed the on-site inspection report were submitted to the court. The court also heard two defence witnesses and asked the accused for their comments. The lawyers of both applicants maintained that they did not have any comments to make concerning these statements. They also demanded the applicants' release pending trial, contending that the accusations brought against them were unfounded. The court ordered the prolongation of their detention on remand considering the nature of the charges and the content of the case-file.

25. At the nine subsequent hearings which were held between 10 May 1994 and 5 July 1995, the Diyarbakır State Security Court was unable to reach a decision as the relevant ballistic report had not been received. At each hearing, the court rejected the applicants' requests for release pending trial, in view of the state of the evidence and the nature of the offence.

26. On 25 September 1995 the court received the ballistic report. At the following hearing, held on 21 November 1995, the public prosecutor submitted his opinion on the merits. He proposed that the applicants be convicted and sentenced under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act. The court rejected once again the applicants' request for release pending trial because of the serious nature of the charges and the state of the evidence.

27. At the hearing of 5 December 1995, the Diyarbakır State Security Court was unable to give a final decision as the prison authorities had failed to bring the first applicant to court. On 26 December 1995 and 27 February 1996, the court rescheduled the hearing to a later date in order to obtain this applicant's final statements.

28. On 26 March 1996 the prison authorities again failed to bring the first applicant before the Diyarbakır State Security Court. His lawyer maintained that the applicant was absent against his will and requested the court to postpone the hearing in order to take his last statements. The second applicant repeated his previous statements. The court convicted the applicants of engaging in acts aimed at the separation of a part of the territory of the State. The court sentenced them to twelve years and six months' imprisonment under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act. The decision was given in the absence of the first applicant.

29. The applicants appealed against the decision of the Diyarbakır State Security Court.

30. On 12 May 1997 the Court of Cassation quashed the decision on the ground that the Diyarbakır State Security Court did not respect the rights of

defence during the proceedings. It emphasized in its decision that the court had convicted the first applicant in his absence, depriving him of his right to submit his final defence. It held that, due to the close connection between the accused, it was appropriate to quash the decision in favour of all the accused.

31. On 1 July 1997 the Diyarbakır State Security Court served a summons on the applicants for the following hearing.

32. On 27 August 1997 the court sent a notice to the Public Prosecutor to ascertain the prison in which the applicants were detained and the address of two of the accused who were released pending trial. Moreover, it requested the population registry office to confirm the apparent death of one of the accused.

33. At the hearing of 7 October 1997 the court requested the transfer of the applicants, who were detained in Amasya and Bartın prisons, to the Diyarbakır Prison.

34. On 18 November 1997 the court postponed the hearing once again as the applicants were still not present and the addresses of the other accused were not yet known to the court.

35. On 27 January 1998 and 10 March 1998 the applicants were present before the court. They submitted their opinion concerning the decision of the Court of Cassation. However, as the other accused, who had been released pending trial, failed to appear, the court was once again unable to reach its final decision.

36. The applicants did not attend the following nine hearings. According to the prison records it was their express wish to not to attend. Moreover during this period neither the office of the public prosecutor nor the population register office submitted to the court the requested information concerning the other accused.

37. At the hearing of 6 April 1999, in the presence of only the applicants' lawyers, the Diyarbakır State Security Court gave its final decision. It convicted the applicants as charged and sentenced them to twelve years and six months' imprisonment. It acquitted one of the accused and decided to sever the case concerning the others whose addresses were still unknown to the court.

38. On 2 June 1999 the applicants appealed to the Court of Cassation. In their petition they maintained that, according to Article 135 (a) of the Code on Criminal Procedure, statements that are obtained using forbidden methods, such as torture, pressure or ill-treatment, cannot be taken into consideration by the court. They contended that they had signed their statements under pressure, without knowing their contents. They therefore requested the quashing of the State Security Court's decision, arguing that it was mainly based on their statements taken in police custody.

39. On 9 November 1999 the Court of Cassation upheld the decision of the first instance court.

THE LAW

40. The applicants complained that they were subjected to torture during their detention in police custody. Furthermore they complained of the length of their detention on remand and the alleged unfairness of the criminal proceedings, in particular due to the composition of the State Security Court that convicted them. They invoked Articles 3, 5 §§ 3, 4, and 5, 6 §§ 1, 2 and 3 (d), 13 and 14 of the Convention.

I. ADMISSIBILITY

A. Exhaustion of domestic remedies

41. The Government alleged that the applicants failed to exhaust the domestic remedies. They did not specify any of the complaints introduced by the applicants, nor point to a particular remedy.

42. The applicants maintained that they had complained before the domestic authorities about all their Convention grievances.

43. The Court observes that the applicants did fulfil their obligation to exhaust domestic remedies.

44. It follows that the Government's preliminary objection of non-exhaustion of domestic remedies must be dismissed.

B. Failure to comply with the six-month rule

45. As regards the complaint concerning the length of the detention period, the Court notes that there are two periods of pre-trial detention in the present case. The first period began for the first applicant on 16 November 1993 and for the second applicant on 24 October 1993. It ended on 26 March 1996, the date of the judgment of the State Security Court. From that point on, and until the Court of Cassation's decision of 12 May 1997 the applicants were detained "after conviction by a competent court", which falls within the scope of Article 5 § 1 (a) of the Convention. However, the applicants lodged their application with the Court on 4 December 1998 which is more than six months from the end of the detention period complained of. Consequently this part of the complaint is introduced out of time and must be rejected for non-compliance with the six-month time-limit in accordance with Article 35 §§ 1 and 4 of the Convention.

46. The second period began on 12 May 1997 and ended on 9 November 1999. The Court notes that this part of the complaint raises serious issues of fact and law under the Convention, the determination of

which requires an examination of the merits. It concludes therefore that this aspect is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

47. As regards the complaint concerning the independence and impartiality of the State Security Court, the Government argued that the applicants should have lodged their application with the Court within six months from the date on which the proceedings had been initiated, namely 6 December 1993 and 21 December 1993. Furthermore, as regards the complaint concerning the alleged deprivation of the right to examine witnesses and the evidence against them, the Government argued that the applicants should have brought their complaint before the Court within six months from 10 May 1994, which was the date on which the statements of the police officers were read out during the hearing.

48. The Court observes that the applicants lodged their application with the Court on 4 December 1998, while the criminal proceedings were still pending before the domestic authorities. The Court of Cassation rendered the final decision after that date, on 9 November 1999. Consequently, the Court finds that the application was lodged well within time.

It follows that the Government's objection must be rejected.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicants complained under Article 3 of the Convention that they were tortured while in police custody. Article 3 of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Arguments before the Court

1. Submissions of the parties

50. The applicants contended that the authorities failed to react to their allegations of torture in police custody. They maintained that, since they were afraid of being subjected to more ill-treatment, they did not complain to the public prosecutor or the judge at the Siirt Assize Court. However, they described the treatment to which they had been subjected in detail in their petitions dated 30 November 1993 and 2 December 1993.

51. The Government maintained that both medical reports dated 5 November 1993 and 1 December 1993 concluded that there had been no traces of blows on the applicants' bodies. They argued that the applicants did not submit any evidence to substantiate their argument concerning the

inadequacy of the medical reports. They also submitted that the applicants did not complain before the Siirt Public Prosecutor and the judge at the Siirt Magistrates Court of the alleged ill-treatment to which they were subjected in police custody. After they were detained and sent to the prison, all the accused in the case, including the applicants, submitted petitions which contained their allegations of torture. However, all the petitions lacked detail concerning the alleged treatment; they were in the same format and were hand-written by the same person. The Government therefore contended that the applicants had failed to substantiate their allegations of ill-treatment.

2. *The Court's assessment*

52. The Court recalls that, in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof “beyond reasonable doubt” *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

53. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283).

54. In the instant case, the ill-treatment complained of by the first applicant consisted of his subjection to blindfolding, being stripped and beatings, while the second applicant complained of having been ill-treated without mentioning any details. The Court notes that there are a number of elements in the case which cast doubt on whether the applicants suffered treatment prohibited by Article 3 when they were detained in police custody in the Siirt Security Directorate.

55. Firstly, neither in their application forms nor in their observations did the applicants provide any details of the alleged ill-treatment in police custody.

56. Secondly, the applicants, apart from their petitions dated 1 December 1993 and 30 November 1993 submitted to the Siirt Assize Court (see paragraphs 10 and 19 above), never mentioned their allegations of torture before the judicial authorities. They did not complain of the alleged treatment when they were first brought before the public prosecutor and the judge at the Siirt Magistrates Court, following their detention in

police custody. Furthermore, at no stage during the criminal proceedings before the Diyarbakır State Security Court, which lasted more than six years, did the applicants or their lawyers raise these allegations.

Additionally, in their appeal before the Court of Cassation, the applicants merely stated that their convictions were based on their police statements which were signed under pressure, without knowing their contents (see paragraph 38).

57. Thirdly, the medical reports dated 5 November 1993 and 1 December 1993 revealed no traces of ill-treatment on the applicants' bodies (see paragraphs 8 and 17 above). The Court is aware of the lack of details in these reports. Nevertheless, it notes that there is no material in the case file which could call into question the findings in these reports or add probative weight to the applicants' allegations.

58. In conclusion, since the evidence before it does not enable it to find beyond all reasonable doubt that the applicants were subjected to ill-treatment, the Court does not find it proven that there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

59. The applicants complained under Article 5 §§ 3, 4 and 5 of the Convention that their detention on remand was unreasonably long, and that their requests for release pending trial received no serious consideration by the court. Moreover, they contended that they were prevented from working whilst on remand, as a result of which they incurred financial loss. Article 5 of the Convention provides as relevant:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Article 5 § 3 of the Convention

60. The Government argued that the State Security Court refused the applicants' request for release pending trial in view of the special circumstances of the case. They contended that, unlike those accused who were released pending trial, there was sufficient evidence confirming the

applicants' involvement with an illegal organisation. The prolongation of their detention on remand was therefore justified.

61. The Court reiterates that it falls in the first place to the domestic judicial authorities to ensure that, in a given case, the detention of an accused person pending trial does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions on the applications for release. It is primarily on the basis of the reasons given in these decisions, and of the established facts mentioned by the applicants in their appeals, that the Court must determine whether or not there has been a violation of Article 5 § 3 of the Convention (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 154).

62. The persistence of a reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the validity of the continued detention, but after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty (see, among other authorities, *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001, and *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

63. In the instant case, the Court notes that the period to be taken into account began on 12 May 1997 and ended on 9 November 1999. It thus lasted more than two years and five months. The Diyarbakır State Security Court relied on "the nature of the offence and the state of the evidence" when it rejected the applicants' many requests for release pending trial.

64. The Diyarbakır State Security Court considered the applicants' continued detention at the end of each hearing, either on its own motion or upon the request of the applicants. However the Court notes from the material in the case file that the State Security Court ordered the applicants' continued detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of evidence". Although, in general, the expression "the state of evidence" may be a relevant factor for the existence and persistence of serious indications of guilt, in the present case it nevertheless, alone, cannot justify the length of the detention of which the applicants complain (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A; *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, § 55, and *Demirel v. Turkey*, no. 39324/98, § 59, 28 January 2003).

65. In this context, the Court considers that the period of approximately two years and five months, given the stereotype reasoning of the courts, has not been shown to be justified, particularly, in the light of the prior period of

more than two years on remand which the applicants had already undergone.

66. Additionally, the Court notes that there was lack of special diligence on the part of the domestic authorities in the conduct the criminal procedure:

During the second set of proceedings before the Diyarbakır State Security Court which lasted approximately one year and nine months, the authorities failed to provide the court with the address of two of the accused and to affirm the apparent death of another. Therefore the hearings were regularly postponed to a further date (see paragraphs 32-37). Although the court obtained the applicants' opinion on the decision of the Court of Cassation on 27 January 1998, it waited more than a year to give a final decision concerning the applicants (see paragraphs 35 and 37).

67. Furthermore the Court observes that the domestic authorities did not act promptly, considering that they were not faced with a particularly difficult task which mainly concerned ascertaining the addresses of some of the accused and obtaining their opinion on the decision of the Court of Cassation.

68. In light of these considerations, the Court considers that the length of the applicants' detention on remand contravened Article 5 § 3 of the Convention.

69. Therefore, there has been a violation of this provision.

B. Article 5 § 4 of the Convention

70. The applicants further complained that their requests for release pending trial received no serious consideration by the Diyarbakır State Security Court. They maintained that they were not even released during the appeal stage. They invoked Article 5 § 4 of the Convention.

71. The Government maintained that the Diyarbakır State Security Court considered releasing the applicants pending trial both *ex officio* as well as upon their requests, at the end of each hearing. It decided to prolong the applicants' detention on remand while releasing some of the accused.

72. The Court notes that this complaint is linked to Article 5 § 3, where it has already examined the manner in which the domestic court treated applicants' requests to be released pending trial (see paragraphs 63-64). It follows that it is not necessary to consider this complaint separately.

C. Article 5 § 5 of the Convention

73. The applicants contended that they were prevented from working during the time they had been detained on remand, as a result of which they incurred financial loss.

74. The Government submitted that, in cases of illegal detention, a request for compensation could be submitted within three months following

the final decision of the trial court under the terms of Law no. 466 on compensation payable to persons unlawfully arrested or detained.

75. The Court notes that the applicants' complaint is not formulated in terms of an allegedly unlawful detention, but in relation to the financial consequences of their remand in custody. Moreover, the action referred to by the Government would have been to no avail in the circumstances of the present case in which, in terms of domestic law, the applicants were lawfully detained. However, the Court has found a breach of Article 5 § 3 of the Convention in the present case which would entitle the applicants to compensation under paragraph 5 of this provision. In this respect, the applicants had no remedy for compensation in domestic law (see, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII, § 58-61).

76. The Court therefore concludes that there has been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

77. The applicants complained in the first place that they 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 Diyarbakır State Security Court. The applicants further maintained that the principle of equality of arms had been violated since they had not been given the opportunity to put questions to all the witnesses. They also contended that the domestic authorities violated their right to be presumed innocent until proven guilty. In this connection, they 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 ... hearing ... by an independent and impartial tribunal established by law.”

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

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

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

78. 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 applicants could have had 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 such courts.

79. 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 the judgments in *Özel v. Turkey*, no. 42739/98, §§ 33-34, 7 November 2002, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

80. The Court sees no reason to reach a different conclusion in this case. It is understandable that the applicants, who were prosecuted by a State Security Court for being members 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, they 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 applicants' 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*).

81. 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.

82. Having regard to its finding that the applicants' 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 complaints under Article 6 of the Convention (see *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII, § 45, and *Durmaz and Others v. Turkey*, nos. 46506/99, 46569/99, 46570/99 and 46939/99, §§ 22-23, 14 October 2004).

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

83. The applicants complained that there were no effective remedies in domestic law in respect of their allegations of torture and the unlawfulness of their detention on remand, in breach of Article 13 of the Convention, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

84. The Court has already examined the applicants' complaints concerning the ineffectiveness of remedies in respect of their detention under Article 5 of the Convention (see paragraphs 75-76 above).

85. As regards the applicant's complaint concerning the ineffectiveness of remedies in respect of their allegations of torture, the Government alleged that there were effective remedies in domestic law. They contended that the applicants failed to complain to the public prosecutor and the judge at the Siirt Magistrates Court. The Government noted that, after the applicants' detention and imprisonment, they submitted petitions to the Siirt Assize

Court. However these petitions were not convincing as they possessed the same hand writing and did not provide any details concerning the alleged acts.

86. The Court recalls that Article 13 of the Convention guarantees a remedy at the national level to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. However, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention (see, *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, § 52).

87. It notes, on the basis of the evidence adduced in the present case, that it has not been shown that the applicants were ill-treated in police custody as alleged (see paragraphs 54-58 above). Having regard to the considerations which led it to conclude that there had not been a violation of Articles 3 of the Convention, the Court considers that the applicants have not made out an “arguable claim” for that grievance which would have required a remedy under Article 13.

88. The Court finds, therefore, that there has been no violation of Article 13 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

89. The applicants alleged that they were subjected to discrimination on the ground of their ethnic origin, in breach of Article 14 of the Convention, which provides insofar as relevant as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national or social origin, [or] association with a national minority, ...”

90. On the basis of the facts established in this case and the materials before it, the Court does not find it proven that there has been a violation of Article 14 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicants claimed 20,000 euros (EUR) each in respect of non-pecuniary damage. Furthermore, they sought reparation for the pecuniary damage they had sustained, but left the amount to the discretion of the Court.

93. The Government disputed these claims. They argued that the applicants should not be granted any compensation in respect of their unspecified pecuniary damages.

94. As regards the alleged pecuniary damage sustained by the applicants, the Court notes that the applicants have not produced any documents in support of their claim, which the Court, accordingly, dismisses.

95. With regard to non-pecuniary damage, the Court considers that the applicants may be taken to have suffered a certain amount of distress in the circumstances of the case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each of the applicants EUR 6,000 for non-pecuniary damage.

96. The Court would add that, where an individual, as in the instant case, has been convicted by a court which did not meet the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (*Öcalan v. Turkey*, [GC], no. 46221/99, § 210 *in fine* ECHR 2005, judgment of 12 May 2005).

B. Costs and expenses

97. The applicants also claimed EUR 5,551 for the costs and expenses incurred before the domestic authorities and before the Court.

98. The Government disputed the claims under this head, arguing that they were unsubstantiated.

99. 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 considers it reasonable to award them, jointly, the sum of EUR 3,000 for costs and expenses.

C. Default interest

100. 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* inadmissible the applicants' complaint about the length of their detention on remand before March 1996 and admissible the remainder of the application;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention regarding the composition of the State Security Court;
7. *Holds* that there is no need to examine the other complaints under Article 6 of the Convention;
8. *Holds* that there has been no violation of Article 13 of the Convention;
9. *Holds* that there has been no violation of Article 14 of the Convention;
10. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros) each in respect of non-pecuniary damage;
 - (ii) EUR 3,000, jointly, in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Dismisses* the remainder of the applicants' 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.

S. DOLLÉ
Registrar

J.-P. COSTA
President