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

SECOND SECTION

CASE OF AKAR AND BEÇET v. TURKEY

(Application no. 55954/00)

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 Akar and Beçet 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. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
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. 55954/00) 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, Ms Suna Akar and Mr Erdal Beçet ("the applicants"), on 30 December 1999.

2. The applicants were represented by Mr F.N. Ertekin and Mr. T. Ayçık, lawyers practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 September 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicants' right to a fair hearing 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 Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1971 and 1975 respectively and live in Istanbul.

6. On 11 March 1996 the Küçükyalı Police Station was informed that a poster with a bomb had been hung over the Küçükyalı Bridge. Following their arrival at the bridge, the police found a cloth-poster of 2x1 metres on which it was written "We have and will demand the account of Gazi[1], MLKP[2]", (*Gazinin hesabını sorduk, soracağız, MLKP*). According to the police report, the box looked as if it contained a bomb. However, it did not.

7. On 12 March 1996 the first applicant was arrested and taken into police custody on suspicion of her involvement in the hanging of the poster. On 19 March 1996 she was brought before the public prosecutor's office at the Istanbul State Security Court and before the Istanbul State Security Court. The court remanded her in custody.

8. On 12 June 1996 the second applicant was arrested and taken into police custody on suspicion of his involvement in the above-mentioned incident. On 18 June 1996 he was brought to the public prosecutor's office at the Istanbul State Security Court and before Istanbul the State Security Court. The court remanded him in custody.

9. On 26 March 1996 and 20 June 1996 respectively, the public prosecutor at the Istanbul State Security Court filed a bill of indictment with that court accusing the applicants of aiding and abetting an illegal organisation, namely the MLKP. The public prosecutor requested that the applicants be convicted and sentenced under Article 169 of the Criminal Code and Article 5 of Law no. 3713.

10. On 1 April 1996 the Istanbul State Security Court commenced the trial of the first applicant together with other co-accused.

11. On an unspecified date, the first and second applicants' case files were joined and they were tried before the Istanbul State Security Court along with four other suspects accused of the same offence.

12. On 23 October 1997 the Istanbul State Security Court, relying on the statements given by the applicants and the other suspects to the police, the public prosecutor and the court, convicted the applicants as charged and sentenced them to three years and nine months' imprisonment.

13. Following a hearing held on 21 June 1999, the Court of Cassation dismissed the applicants' appeal and upheld the judgment of the Istanbul

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1. In March 1995 serious disturbances took place in the Gazi neighbourhood of Istanbul. As a result sixteen people were killed and around two hundred persons were injured.
2. (Marxist Leninist Communist Party- *Marksist Leninist Komünist Partisi*)

State Security Court. On 21 July 1999 the judgment of the Court of Cassation was deposited with the registry of the Istanbul State Security Court.

II. THE 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 applicants complained that they had been denied a fair hearing on account of the presence of a military judge on the bench of the Istanbul State Security Court which tried and convicted them and that they were convicted solely on the basis of their statements in police custody. They relied on Article 6 of the Convention, which in so far as relevant reads as follows:

> "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."

A. Admissibility

16. The Government argued under Article 35 of the Convention that the applicants' complaint in respect of the independence and impartiality of the Istanbul State Security Court must be rejected for non-exhaustion of domestic remedies. They maintained that the applicants had not invoked this complaint before the domestic courts.

17. The Court reiterates that it has already examined and rejected the Government's preliminary objection in similar cases (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.

18. In view of the above, 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. 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 v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

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 applicants – 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 applicants' 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 applicants 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 applicants' right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaint under Article 6 of the Convention relating to the fairness of the proceedings before it (see, among other authorities, *Incal,* cited above, § 74).

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 applicants sought compensation for pecuniary damage in the global sum of 10,496 French Francs (FRF) (approximately 1,600 euros (EUR)). They also claimed compensation for non-pecuniary damage of FRF 131,190 (approximately EUR 20,000).

26. The Government did not express an opinion.

27. As regards the alleged pecuniary damage sustained by the applicants, the Court notes that they failed to produce any receipt or documents in support of their claim. The Court accordingly dismisses it.

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 applicants in this respect (see *Incal*, cited above, p. 1575, § 82 and *Çıraklar*, cited above, § 45).

29. The Court considers 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 (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-...).

B. Costs and expenses

30. The applicants also claimed FRF 1,390 (approximately EUR 211) for costs and expenses incurred in the domestic proceedings and FRF 34,120 (approximately EUR 5,200) for those incurred before the Court. This included FRF 32,586 (approximately EUR 4,100) in respect of legal fees and FRF 1,534 (approximately EUR 233) for costs such as postage, photocopying, stationary and translation. To substantiate their claims, the applicants submitted invoices pertaining to the sum paid to their lawyers during the domestic proceedings. They further submitted that they had made an oral fee agreement with their representatives before the Court to pay them FRF 32,586 and submitted the Istanbul Bar Association's recommended minimum fees list for 2004. They did not submit any documents in respect of costs and expenses.

31. The Government did not express an opinion.

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 considers it reasonable to award the global sum of EUR 2,200, jointly, covering costs and expenses under all heads.

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 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 Istanbul State Security Court;

3. *Holds* that it is not necessary to consider the applicants' other complaint under Article 6 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

5. *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, EUR 2,200 (two thousand two hundred euros), jointly, 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 taxes or charges 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 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