



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

SECOND SECTION

CASE OF ÜNSAL ÖZTÜRK v. TURKEY

(Application no. 29365/95)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Ünsal Öztürk 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 29365/95) 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, Ünsal Öztürk (“the applicant”), on 21 December 1994.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, and Ms F. McKay, lawyers practicing in London, Mr K. Yıldız of the Kurdish Human Rights Project in London, and Mr H. Öndül and Mr L. Kanat, lawyers practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged, in particular, under Articles 7 and 10 of the Convention and Article 1 of Protocol No. 1, that his successive convictions and sentences for disseminating separatist propaganda by publishing certain books was unforeseeable under domestic law and amounted to a violation of his right to freedom of expression and his right to property.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government appointed Mr Feyyaz Gölcüklü as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

7. By a decision of 27 May 2003 the Court declared the application partly admissible. It retained the applicant's complaints under Articles 7 and 10 of the Convention and Article 1 of Protocol No. 1.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

9. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1957 and lives in Ankara.

11. The applicant is the owner of “*Yurt Books and Publishing*”, a small independent firm that has published numerous books in Turkey. The applicant was subjected to several criminal prosecutions for having published certain books between 1991 and 1994 which were held by various State Security Court to constitute propaganda against the indivisible unity of the State.

12. As a result, the applicant was convicted, in most cases, under the Prevention of Terrorism Act (Law No. 3712) and sentenced to periods of imprisonment ranging from six months to two years, as well as fines. After the changes to the Prevention of Terrorism Act on 27 October 1995, the proceedings against the applicant were re-opened and the applicant's sentences commuted to fines, where not otherwise completed. Following the entry into force on 4 August 1997 of Law No. 4304 on the deferment of the judgments and of the execution of sentences in respect of offences committed by editors before 12 July 1997, the ongoing criminal proceedings against the applicant were suspended. Most of the books were confiscated.

13. In all, the applicant served a total of one year, five months and twenty days in prison and paid the equivalent of 5,121 euros (EUR) in fines.

14. A chronology of the various proceedings is annexed to the present judgment.

A. The books which engendered prosecutions

1. “*The Kurds: A Nation discovering itself*” (“*Kendini keşfeden Ulus: Kürtler*”)

15. This book was a compilation of interviews given by the author, İsmail Beşikçi, to various foreign and national newspapers, some of which

were never published. The Istanbul State Security Court highlighted certain extracts to support the applicant's conviction:

“Kürt sorununun odak noktasının Kürdistan'ın bölünmesi ve paylaşılması olduğunu düşünüyorum, bugün İran'ın bir Kürdistanı var, Irak'ın bir Kürdistanı var, Türkiye'nin bir Kürdistanı var... Kürt ulusuna karşı böl yönet politikası uygulanmıştır...

...Türkiye'de Kürtlere karşı yoğun bir devlet terörü var, Yani terörü devlet yapıyor. Örneğin devlet şöyle işler yapıyor Kürdistan'da: Çocukları bir duvarın dibine diziyo. Duvarın karşı tarafta da çocukların babalarını veya dedelerini diziyo. Karşılıklı iki ev. Bir tarafta babalar, dedeler işkence görüyorlar, diğer tarafta da onların çocukları ...

...Kürdistan ulusal mücadelesinin çok onurlu, sonsuz derecede meşru bir mücadele olduğu kuşkusuzdur. Kürdistan'da kapsamlı, yoğun ve onurlu bir gerilla mücadelesi sürerken, yurt dışında olmanın bu mücadeleye aktif olarak katılamamanın yurt dışındaki kürtler için çok büyük bir güçlük oluşturduğunu düşünmekteyim ... Kürdistan ulusal kurtuluş mücadelesine katılmanın, bu onurlu mücadeleyi desteklemenin binbir türlü yolu vardır... Kürdistan ulusal mücadelesi içinde yeralan bütün işçilere, bütün köylülere, aydınlara, gerilaya katılan genç erkeklere ve kadınlara, gerilayı destekleyen herkese, gerilla mücadelesinin önderliğini yürüten bütün kadrolara, başkan Apo'ya binlerce selam olsun ...”

<Translation>

“I think the focal point of the Kurdish problem is the division and partition of Kurdistan. Today, Iran has a Kurdistan, Iraq has a Kurdistan, [and] Turkey has a Kurdistan. ... The policy of divide and rule was applied to the Kurdish Nation. ...

...There is intense State terror against the Kurds in Turkey ... For example, the State is doing the following in Kurdistan: It is assembling children next to the wall. On the other side of the wall, it is assembling their fathers or grandfathers. Two houses facing each other. On the one side, fathers and grandfathers are tortured, on the other their children. ...

...There is no doubt that the Kurdistan national struggle is a very honourable, infinitely legitimate movement. I think that while the comprehensive, intense and honourable guerrilla struggle is continuing in Kurdistan, it is difficult for the Kurds in foreign countries not to be able to participate actively in this struggle. ... There are thousands of ways to participate in the Kurdistan liberation struggle, [and] to support this honourable struggle. ...Thousands of salutations to workers, villagers and intellectuals who participate in the Kurdistan national struggle, young men and women who joined the guerrillas, all those who support the guerrillas, to all the cadres who lead the guerrilla struggle [and] to leader Apo. ...”

2. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society II - The Defence” (“Bilimsel yöntem, Üniversite özerkliği ve demokratik toplum ilkeleri açısından İsmail Beşikçi davası II-Savunma”)*

16. This book concerned legal proceedings brought against the author, İsmail Beşikçi, in a Martial Law Court in 1980, together with the author's comments. The following statements were highlighted in the prosecution:

“...Kürt toplumunda ekonomik, toplumsal ve siyasal bakımlardan bazı değişimler olmaktadır. Bu değişimler sürecinden aşiret yapıları çözülme, ulusal bilinç gelişmektedir. Önümüzdeki dönemde, Kürt toplumunda, ulusal bilinç hızlı bir şekilde gelişecektir. Bu süreci, devrimci ve demokratik bir bilinçle donanmış küçük burjuva Kürtlerde, Kürt aydınlarında görmek mümkün olacaktır. ...”

<Translation>

“...there are certain economic, social and political changes in the Kurdish community. By this process of change, the feudal structures are loosening, [and] the national conscience is developing. In the coming period, the national conscience is going to develop speedily in the Kurdish community. It will be possible to see, amongst the small bourgeoisie, Kurds equipped with a revolutionary and democratic conscience, as well as amongst Kurdish intellectuals. ...”

3. “*An intellectual, an organisation and the Kurdish problem*” (“*Bir Aydın, bir örgüt ve Kürt sorunu*”)

17. This book was originally published in 1990 by another publisher. At that time, an action was brought against İsmail Beşikçi and the publisher in the Istanbul State Security Court under Article 142 of the Criminal Code. Following the repeal of Article 142 on 4 June 1991 they were acquitted.

18. In October 1993 the applicant re-published the book. The following statements were highlighted in the prosecution:

“...Lozan. Türkler için yeni bir devletin kuruluşudur, bir kurtuluştur, Kürtler için ise bir esarettir, Kürdistan'ın bölünmesinin, parçalanmasının ve paylaşılmasının, Kürt Ulusuna böl-yönet politikası uygulamasının garantiye alındığı, uluslararası bir antlaşmadır. ...İngiliz emperyalizmi kemalistlerle, Arap emperyalizmi ile, İran Şahı ile işbirliği yaparak Kürdistan'ı bölmüş, parçalamış ve paylaşmıştır. ...

...Atatürk herşeyden önce bir Kürt cellatıdır. ...”

<Translation>

“...The Lausanne Treaty is, for the Turks, the establishment of a new State; liberation but for the Kurds, it is captivity. It is an international treaty by which Kurdistan was divided, partitioned, and by which the implementation of the policy of 'divide and rule' against the Kurdish nation was guaranteed. ...British imperialism collaborated with the Kemalists, the Arab imperialists and the Shah of Iran to divide, destroy and share Kurdistan amongst them. ...

Atatürk is, above all, an executioner of the Kurds.”

4. “*On Kurdish society*” (“*Kürt toplumu üzerine*”)

19. This book consisted of articles written by İsmail Beşikçi before 1971. The following statements were highlighted in the prosecution:

“...Kürdistan, bilinçli bir devlet politikası ile geri bırakılmıştır, bu politika ile Kürdistan'da sanayileşme gerçekleştirilmemiş, olanakları yaratılmamıştır, böylece nüfusun batı illerine göçü sağlanmıştır. Göç süreci asimilasyon doğrultusunda kullanılmıştır. ...

...Bugün Kürt ulusal varlığını, Kürt dilini, Kürdistan'ı inkar eden hiçbir hukuksal düzenlemenin meşru olmadığını vurgulamaya çalışıyorum. ...

...O halde bugün Türkiye halkları emperyalizm ve onun işbirlikçisi olan işbirlikçi burjuvazi ve feodal ağalardan meydan gelen bir üçlü tarafından baskı altında tutulmakta ve sömürülmektedir. ...”

<Translation>

“...It was deliberate State policy to leave Kurdistan in a backward condition. This policy of not industrialising Kurdistan, or not creating opportunities for industrialisation, was used [to encourage] the immigration of the population to the western cities. The immigration process was used for assimilation. ...

...I am trying to emphasise that no legal order which denies the existence of the Kurdish nation, the Kurdish language and Kurdistan can be legitimate. ...

...Today, therefore, the troika of imperialism and its collaborators, the bourgeoisie and the feudal lords, oppress and exploit the people of Turkey. ...”

5. “*Rising consciousness*” (“*Bilincin yükselişi*”)

20. This book consisted of official documentation relating to criminal proceedings before various courts, in particular before the State Security Courts, brought against İsmail Beşikçi and the applicant.

6. “*The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society V - The approval decision of the Court of Cassation and the rectification of the judgment*” (“*Bilimsel yöntem, Üniversite özerkliği ve demokratik toplum ilkeleri açısından İsmail Beşikçi davası V-Yargıtay'ın onama kararı ve Tashihi karar*”)

21. This book was the last in the series concerning the proceedings against İsmail Beşikçi in a Martial Law Court in 1980. The following statements were highlighted in the prosecution:

“Askeri Yargıtay bu iddiaların varit olmadığını söylerken yalan söylemek zorunda kalmıştır. ...3. Daire beyanı yalandır. Askeri Yargıtay hüküm mahkemesinin uzlaşmaz çelişmelerini hasıraltı etme ve gizleme gayreti içindedir. ...Askeri Yargıtay hüküm mahkemesinin bu çok çirkin ve ayıp olan kurnazlıklarını tarafımdan deşifre edilmemiş olsaydı bu kurnazlığı sürdürmekte başarılı kalabilirdi. ... Askeri Mahkemelerin, sağcı güçlerin ne kadar yanında ve kontrolünde olduğunu açıkca göstermektedir. ...”

<Translation>

“The Military Court of Cassation had to lie when it said that these allegations were untrue. ... The Military Court of Cassation is trying to cover up the contradictions of the lower court. ... If I had not exposed the ugly and shameful tricks of the Military Court of Cassation, they could have successfully maintained their course. ... [This] shows how much the Military Courts are next to and under the control of the right wing powers. ...”

7. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society I - The Supreme Administrative Court cases, the indictment and the observations on the merits” (“Bilimsel yöntem, Üniversite özerkliği ve demokratik toplum ilkeleri açısından İsmail Beşikçi davası I-Danıştay davaları, iddianame, esas hakkındaki müatalaa”)*

22. This book consisted of documents and comments concerning the administrative proceedings involving İsmail Beşikçi. The criminal proceedings were dismissed by the Ankara State Security Court on the ground that the book was the continuation of another book for which the applicant had already been convicted.

8. *“The incident of General Muğlalı; the thirty-three bullets” (“Orgeneral muğlalı olayı, otuzüç kurşun”)*

23. Another publishing company originally published this book in March 1991. A trial against the publisher resulted in an acquittal on 5 June 1991 following the repeal of Article 142 of the Criminal Code.

24. In March 1992 the applicant re-published the book. He was unsuccessfully prosecuted in 1994 because of a time-bar.

9. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society IV - Application to the Court of Cassation” (“Bilimsel yöntem, Üniversite özerkliği ve demokratik toplum ilkeleri açısından İsmail Beşikçi davası IV-Yargıtay'a başvuru”)*

25. This book consisted of documents and comments concerning the appeal before the Court of Cassation in the legal proceedings brought against İsmail Beşikçi in the Martial Law Court in 1980. The following statements were highlighted in the prosecution:

“... Kürt gerçeğini ve Kürdistan gerçeğini inkar eden hiç bir yargılama süreci geçerli değildir. 1971 duruşmalarında mahkemelere devletin yasaları hatırlatıyor, yasalara uyulması gerektiğini vurguluyorduk. Devletin kendi yasalarına neden uymadığının çözümlemesi yapıldı. Bu çözümleme sonucunda artık devletin yasalarının meşru olmadığını vurgulamaya çalışıyoruz. Kürtlerin ulusal varlığını, Kürtçenin varlığını inkar eden hiç bir düşünce ve tavır, davranış meşru değildir. ...”

<Translation>

“... No proceedings which deny the Kurdish and Kurdistan reality can be valid. In the 1971 hearings we were reminding the courts of the laws of the State and telling them to apply the law. It has now been resolved why the State did not abide by its own rules. We are now trying to emphasise that the rules of the State are no longer legitimate. No idea or action which denies the national existence of the Kurds and of their language is legitimate. ...”

10. “*The way opened by the courts*” (“*Mahkemelerin açtığı yol*”)

26. The book consisted of documentation generated during the trials which took place prior to the enactment of the Prevention of Terrorism Act. The trials in question resulted in acquittals. This documentation consists of various indictments, petitions and court decisions. Although the author was convicted and the book confiscated, the prosecution against the applicant was time-barred.

11. “*Tainted concepts: science, equality, justice*” (“*Kirletilen kavramlar: Bilim, eşitlik, adalet*”)

27. This book was a compilation of İsmail Beşikçi's essays previously published in certain newspapers. The following statements were highlighted in the prosecution:

“... Gerilla mücadelesi gerek Kürdistan'da gerek Türkiye'de toplumsal ve ekonomik yapıları, siyasal kurumların değer sistemlerini yoğun bir şekilde etkilemektedir. Özgürlük hareketinin bilime ihtiyacı büyüktür. Özgürlük hareketi bunun bilincindedir. Özgürlük hareketi demokrasi, özgürlük, eşitlik, hukuk, hukukun evrensel ilkeleri, bağımsızlık, ulusların eşitliği, ulusların kendi geleceklerini tayin, insan hakları gibi kategorilerinde bilincindedir. ... Son yıllarda Kürt toplumunda çok büyük siyasal ve toplumsal değişimler oluyor. ... Kürt insanı artık toplumsal ve kültürel değerlerinin sömürgeci güçler tarafından tamamen gasp edilmiş olduğunun farkına ve bilincine varıyor. Bunlara yeniden sahip çıkmanın çabası içinde. ...

...PKK geniş Kürt halk yığınlarının gönlündedir, yüreklerindedir. PKK geniş Kürt halk kitlelerinin beyinlerine girmiştir. Kürt halkı PKK olmuştur. Zira özgürlük sadece Kıbrıs Türkleri'nin, Bosna Hersek'teki müslümanların, Karabağ'daki Azeriler'in özlemi değildir. Özgürlük Kürtlerin de hakkıdır.”

<Translation>

“...the guerrilla struggle strongly influences the social and economic structures as well as the value systems of the political institutions, both in Kurdistan and in Turkey. The need for science in freedom movements is great. The freedom movement is conscious of this. The freedom movement is aware of the categories such as democracy, liberty, equality, law, universal principles of law, equality between States, independence, the right to self determination and Human Rights. ... There have been very big political and social changes in the Kurdish population in recent years. ... The Kurds are now conscious that their social and cultural values have been totally seized by the colonial powers. It is trying to regain them....

The PKK¹ is in the hearts and souls of the broad mass of Kurdish people; it has penetrated their minds. They have become one with the PKK. For freedom is not the sole prerogative of Turks in Cyprus, Muslims in Bosnia Herzegovina or the people of Karabagh in Azerbaijan. Freedom is the right of the Kurds as well.”

1. The Kurdistan Workers' Party

12. “Lawless justice” (“Hukuksuz adalet”)

28. This book consisted of the indictment filed against both the applicant and the author İsmail Beşikçi by the public prosecutor at the State Security Court, the decision delivered against them and the defence statements submitted by İsmail Beşikçi to the Court of Cassation, in the proceedings concerning the book “Raising consciousness”, together with his comments. The following statements were highlighted in the prosecution:

“... Türkiye’de Kürtlere karşı son derece yoğun ve yaygın ve sürekli bir devlet terörü uygulanmaktadır. Kürdistan’ın Kürt köyleri yakılmakta ve yıkılmaktadır. PKK’nın son yıllarda özellikle son bir yıl içinde çok derin ve yaygın bir gelişme süreci içine girmiştir. ...Kürt sorunu ulusal bir sorundur. Kürt sorununun temelinde Kürdistan’ın ve ulusunun emperyalistlerce ve onların ortadeğerindeki işbirlikçi hükümepleri tarafından işbirlikçi ve güçbirliği yaparak bölünmesi, parçalanması ve paylaşılması ve Kürtlerin bağımsız devlet kurma haklarının gasp edilmesi yatar. Kürtler kendilerine uygulanan böl-yönet politikalarına 70 yılı aşkın bir zamandır karşı koyuyorlar. Silahlı mücadele ediyorlar. ...Gerilla hareketlerini sömürgeciliği yok etmenin bir yolu olarak değerlendirmenin daha doğru olacağı kanısındayım. ... Kürtler henüz yirmi yaşına bile ulaşmamış genç insanlar, Kürdistan için ölüme gidiyorlar. Bu inanç, bu direnç ancak ulusa ve ulusun kimliğine duyulan güvenden ileri gelebilir. ...”

<Translation>

“...extremely intense, widespread and persistent State terrorism is practised against the Kurds in Turkey. Kurdish villages in Kurdistan are being burnt and destroyed. The PKK has entered a very profound and widespread process of development in recent years and in particular during last year. ... The Kurdish question is a national one. The imperialists' and their collaborators' plans to divide and share Kurdistan and the Kurdish nation, and the seizure of the right of the Kurdish people to found an independent state, form the basis of the Kurdish question. ... The Kurds have been resisting for over 70 years this policy of 'divide and rule'. They are fighting with guns. ... The Kurds were made slaves. ... I believe that it is more correct to evaluate the guerrilla movement as a way to eradicate colonialism. ... Kurds, young people who are barely 20 years old, chose to die for Kurdistan. This belief, this resistance, can only stem from the trust one feels for the nation and the national identity. ...”

13. “Tainted values: democracy, peace, brotherhood” (“Kirlenilen değerler: Demokrasi, barış, kardeşlik”)

29. The book was a collection of writings by İsmail Beşikçi. The prosecution drew attention to the following paragraphs:

“... Bu kitapta iki inceleme yer almaktadır. Birincisi bireysel başvurunun sömürgeci değeri başlığını taşımaktadır. Alt sömürge Kürdistan’da gelişen gerilla mücadelesi, toplumsal ve siyasal gelişmeler karşısında bireysel başvurunun ne anlama geldiği konusu tartışılmaktadır. ... Türkiye’nin Kürdistan’da gerçekleştirdiği operasyonları ise değil suçluya karşı muamele, düşmana karşı muamele kavramı içinde açıklamak mümkün değildir. Türkiye alt sömürge Kürdistan’da zamana yayılmış bir soykırım gerçekleştirmektedir. ...

...Kürtler Türkiye’de son birkaç yıla kadar inkar ediliyorlardı. Kürtlerin ulusal ve toplumsal varlığı ısrarla inkar ediliyordu. Kürtlerin aslının Türk olduğu vurgulanıyordu ... ve bu görüş, bu anlayış resmi ideolojinin en önemli boyutunu

meydana getiriyordu. ... 10 yılı aşkın bir zamandır süren gerilla mücadelesinin fiili kazanımlarından dolayı Türk devleti artık Kürtlerin varlığını, Kürtçe'nin varlığını inkar edemiyor, Kürt diye bilinen bir millet yoktur, Kürtçe diye bilinen bir dil yoktur diyemiyor. ... Bugün devletin Kürtlere söylediği şey şudur: İlkel dilinizi köyünüzde, evinizde, tarlanızda vs konuşabilirsiniz. Kürt kökenli olduğunuzu söyleyebilirsiniz. Fakat Türkiye'de yaşamak için Türk olmak, Türkleşmek zorundasınız. Türk gibi yaşamak zorundasınız. ...

Türkiye'nin, Kürdistan'da uyguladığı politikanın yoğun bir devlet terörünün içerdiği açıktır. Devlet terörünün oluşması ve tırmanması Kürt kimliğinin ve Kürdistan kimliğinin inkarı ile yakından ilgilidir. ... Kürtler belirli bir düşünce etrafında örgütlenmeye başlasa o örgüt hemen yasaklanmakta, kapatılmakta, etkinliği yok edilmeye çalışılmaktadır. ... PKK'nın 1970'li yılların sonlarında kuruluşunu ve 1980'li yılların başında silahlı mücadeleye başlamasını bu çerçeve içinde değerlendirmek gerekir. Devlet Kürtlere kendilerini ifade edebilmek için silaha başvurmaktan baksı hiçbir yol bırakmamıştır. ... Bunlara rağmen Avrupa Devletleri çağdaş değerleri değil ırkçılığı ve sömürgeciliği savunuyorlar. Devlet terörünü görmezden geliyorlar. Böylece Devlet terörünü teşvik ediyorlar. Devlet terörüne karşı mücadele eden özgürlük hareketini PKK'nın uyguladığı şiddeti ise büyütüyorlar. ...”

<Translation>

“There are two studies in this book. The first concerns the right of individual petition and its value in a colony. It discusses the meaning of individual petition in the context of guerrilla warfare and the social and political developments in the sub-colony of Kurdistan ... It is impossible to qualify the operations performed by Turkey in Kurdistan as 'action against an enemy', let alone as 'the treatment of accused people'. Turkey is perpetrating genocide over a period of time in the sub-colony of Kurdistan ... The Kurds in Turkey were denied an existence until a few years ago. Their national and social existence was persistently denied. It was emphasised that the origin of the Kurds was 'Turkish' ... and this opinion, this concept, constituted the most important aspect of the official ideology ... The Turkish State can no longer deny the existence of Kurds or Kurdish as a result of the effective gains of the guerrilla struggle which has been going on for over 10 years; [it] can no longer say that there is no Kurdish nation or Kurdish language ... The State's message to the Kurds today is: You may speak your primitive language in your villages, your homes, your fields, etc. You may say that you are of Kurdish origin. But in order to live in Turkey you must become Turks. You must live like Turks. ...

It is evident that the policy conducted by Turkey in Kurdistan involves intense State terror. The development and rise of this terror is closely related to the denial of the Kurdish and Kurdistan identity. ... As soon as the Kurds start to organise around a specific idea, then that organisation is banned, closed, and an attempt is made to eliminate its effectiveness. ... The establishment of the PKK at the end of the 1970's and the start of its armed struggle at the beginning of the 1980's should be assessed in this context. The State did not leave any other way for the Kurds to express themselves other than by guns. ... Despite this, the European States, instead of defending contemporary values, defend racism and colonialism. They pretend not to see the State terror. Therefore, they encourage it. They exaggerate the violence perpetrated by the PKK liberation movement in its fight against State terror.”

14. *“Dysfunctional prohibitions: prohibitions of thought and fraud”*
(“İşlevsizleşen yasaklar: düşünce yasakları, dolandırıcılık yasakları”)

30. The book contained a collection of indictments filed against İsmail Beşikçi, the judgments of the courts and defence statements made by İsmail Beşikçi, together with his comments. The following paragraphs were highlighted by the first-instance court:

“PKK önderliğinde Kürdistan'da cereyan eden mücadele ulusal ve toplumsal kurtuluş mücadelesidir. Hiç bir ulusal kurtuluş mücadelesin de şiddet kullanmadan başarıya ulaşamaz. ...Bu devlet terörü karşısında alt sömürge ulusal demokratik güçlerinin de belirli bir şiddet uygulamaları kaçınılmaz olmaktadır. ...Devlet kürtlere karşı sistematik bir katliam yapmaktadır, soykırım uygulaması içermektedir. ...”

<Translation>

“The struggle led by the PKK in Kurdistan is a national and social liberation struggle. No national liberation struggle can be successful without the use of force. ... In the face of State terror, it becomes inevitable for the sub-colony's national democratic forces to use certain force. ... The State is conducting a systematic massacre of Kurds; [it] contains a practice of genocide. ...”

31. The court also pointed out that the book openly revealed the identities of security force officials at its pages 23 and 38, referring to some articles published in the Özgür Gündem newspaper on 1 February and 13 February 1994 respectively.

15. *The joint prosecution in respect of 14 books written by İsmail Beşikçi*

32. The books in question, published in 1991 and 1992, were as follows:
- “State terror in the Middle East” (“Ortadoğu'da devlet terörü”);
 - “The compulsory settlement of Kurds” (“Kürtlerin mecburi iskani”);
 - “Interstate colony: Kurdistan” (“Devletlerarası sömürge: Kürdistan”);
 - “A thesis of Turkish history, the sun-language theory and the Kurdish problem” (“Türk tarihi tezi, Güneş-dil teorisi ve kürt sorunu”);
 - “A letter to UNESCO” (“UNESCO'ya mektup”);
 - “The demolition of the police stations in our minds, trial periods and becoming free” (“Zihinlerimizdeki karakolların yıkılması, yargılama süreçleri ve özgürleşme”);
 - “The scientific method” (“Bilimsel Metod”);
 - “The system of East Anatolia, on a socio-economic and ethnic basis I” (“Doğu Anadolu'nun düzeni, sosyo-ekonomik ve etnik temeli- I”);
 - “The system of East Anatolia, on a socio-economic and ethnic basis II” (“Doğu Anadolu'nun düzeni, sosyo-ekonomik ve etnik temeli - II”);
 - “Scientifically official ideology, State democracy and the Kurdish problem” (“Bilim-resmi ideoloji, devlet, demokrasi ve kürt sorunu”);

- “The Republican people's party, the Constitution (1927) and the Kurdish problem” (“Cumhuriyet Halk Fırkası'nın tüzüğü (1927) ve Kürt problemi”);
- “Conditions for uprising” (“Başkaldırının koşulları”);
- “The Tunceli Law 1935 and the Dersim Genocide” (“Tunceli Kanunu 1935 ve Dersim Jenosidi”);
- “The imperialist, divisive struggle over Kurdistan” (“Kürdistan üzerinde emperyalist bölüşüm mücadelesi”).

33. In its decision of 22 May 1997, convicting the applicant, the Ankara State Security Court referred to a number of passages in the books and held that they propagated separatism and openly praised terrorist organisations. In particular, the court stated that the PKK was an armed gang and did not represent the Kurds. In this connection, the court considered that the author's persistent praise of the PKK, as defenders of the rights and liberties of certain citizens, necessitated condemnation under Law no. 3713. It further found that the main idea behind these books was to oppose Turks and Kurds against one another. The court noted that the author considered the legitimate actions of the State, against an armed gang seeking to destroy democratic rights, as terrorism.

16. *“The Truncheon Republic” (“Cop Cumhuriyeti”)*

34. This book, written by Günay Aslan, was a collection of graffiti and caricatures about the south-east. The graffiti used were distortions of famous words, song or commercials in Turkey. The prosecution drew attention to the following paragraphs:

“Ve Tanrı PKK'yı yarattı. ...

Sana bir tokat atana sen de bir roket at! ...

Faili meçhul ölmemiz ırsidir, isyanlarımızdan bize geçmiştir. İmza: Kürt Halkı. ...

Konuşan Türkiye, susan Kurdistan demektir. ...

Tuvalet duvarına 'Yaşasın PKK' diye yazsak, Türkiye Cumhuriyeti devletinin ülkesi ve milleti ile bölünmez bütünlüğüne yönelik bölücü mahiyette propaganda yapmak suçuna girer mi?

PKK girse de yaşar, girmese de yaşar. ...

Bir gün gelecek bütün Kürtleri imha edeceğiz. İmza: Özel Tim ...

O bir gün hiç gelmeyecek! İmza: PKK ...”

<translation>

“And God created the PKK! ...

If somebody slaps you in the face, send him a rocket! ...

It is a genetic trait that we die by the hand of unknown perpetrators, inherited through insurrections. Signed: the Kurdish people. ...

Free speaking Turkey means silenced Kurdistan ...

If we write 'Long live the PKK' on a toilet wall, would this constitute separatist propaganda aiming at the indivisibility of the Turkish nation?

- The PKK will live long no matter what! ...

- A day will come when we will destroy all the Kurds. Signed: the Special Forces...

- That day will never come! Signed: the PKK ...”

17. *“The Fascism of 12 September and the PKK resistance”*
(*“12 Eylül Faşizmi ve PKK direnişi”*)

35. The book was written by Abdullah Öcalan, the leader of the PKK. It was first published in May 1991 in Germany. The book was published in Turkey in November 1992. The foreword to the book included the statement that the ideas and views of Abdullah Öcalan were distorted by State press organs and that this was unfair to the public who needed to form an independent opinion of Abdullah Öcalan. Therefore, the books and articles which conveyed his opinions should be published. The applicant further accused the State of considering those who shared a different opinion to be terrorists. Finally, he wrote that he was presenting the views of Abdullah Öcalan, who was an authority on the Kurdish national movement, to the public since this movement was of public interest.

18. *“The screaming breath of the murdered miner - the Bosphorus occupation”* (*“Boğaziçi İşgali- Katledilen madencinin haykıran soluğu”*)

36. The book edited by Naile Tuncer and published in October 1992 consisted of a diary by some TIKB¹ militants who occupied the University of Boğaziçi for a few days in protest against an explosion in a coal mine that had occurred in March 1992. It contained press releases of the organisation, official documents relating to the event and photographs. On the book cover there appeared a partially obscured banner with the name of the TIKB.

37. In condemning the applicant on 20 December 1994 under Article 7 § 5 of Law no. 3713, the Ankara State Security held that the TIKB was an illegal organisation since it continued its illegal armed activities. The mining accident had been a mere pretext for disseminating propaganda on behalf of that organisation. The applicant served the six month prison sentence which was imposed and paid the fine. He did not appeal as he had missed the deadline for its submission.

1. (The Union of Revolutionary Communists of Turkey - *Türkiye İhtilalci Komünistler Birliği*)

19. “*The great plane tree - The Kurdish sage Musa Anter*” (“*Koca Çınar-Kürt Bilgesi Musa Anter*”)

38. This book was dedicated to the memory of Musa Anter, who had been killed in Diyarbakır. The anthology consists of messages of condolence and articles previously published in some newspapers selected by Yaşar Kaya. The prosecution highlighted the following paragraphs:

“O gelişen Kürt ulusal özgürlük mücadelesine inandı. Özgürlük mücadelesinin gerçekleri düşmana inat dobra dobra 'Genç olsaydım dağa çıkar gerillaya katılırdım' diyebilen bir yiğitti. ... Ölümünden sonra özgür Gündem'e yüzlerce mesaj geldi. Kimisi ona Kürt bilgesi diyordu. Kimisi Apo Musa diyordu. Kimisi 70 yıllık çınar ağacımız kimisi 70 yıllık canlı tarihimiz, kimisi ulusumuzun yiğit evladı diyordu. Kurtolog ve Kürt aydını, Kürt bilgesi olmanın yanında bütün bu sıfatları hak etmiş ve gönüllere taht kurmuş bir insandı. ...

Musa Anter'in katili tek kelimeyle TC.'dir. ...

Musa Anter'in deyimi ile Bizans'ın, Kürtler'in ve arabin kültürü üzerine konan bu karanlık Türkçülük kimin Türkçülüğüdür? Türkler'den %10, Araplar'dan %50, Kürt ve Farslar'dan %35 oluşan bu dil hangi Türk'ün dilidir? ... Korkusundan kendisine Türküm diyen ama gerçekte Türk olmayan Anadolu'nun azınlıklarını uyandıran herkesten korkuyorlar. ... ve yalan ülkenin sahtekar sahipleri, yalan üzerine kurulu sistemleri ile yerle bir olacaklardır....

Devlet bu politikaları ile Kürt halkını teslim almaya ... tek tek insanları öldürmekten, şekillerin imhasına kadar her türlü katliamı deniyor ... işlediği cinayetlere Türk halkını da ortak ediyor.”

<translation>

“He believed in the Kurds' growing struggle for freedom. He was a hero, who was able to say, 'If I were young I would go to the mountains and join the guerrillas,' in the face of the enemy without fear ... After his demise, hundreds of messages reached the Özgür Gündem newspaper office. Some people called him the Kurdish sage. Some called him Apo Musa. Some said he was 'our 70 year old plane tree, our 70 year old living history, or the hero of our nation'. Besides being a Kurdologist, a Kurdish intellectual, a Kurdish sage, he was a person who deserved all these titles, loved by everyone. ...

The murderer of Musa Anter is simply the Turkish Republic. ...

As Musa Anter put it: what sort of nationalism is this sinister Turkish kind which arises from the inherited cultures of Byzantium, the Kurds and the Arabs? What Turkish language are we talking about when that language is made up of 10% Turkish, 50% Arabic and 35% Kurdish and Persian? ... They are afraid of anyone who might awaken the minorities of Anatolia, who only admit to being Turkish out of fear. ... One day the fraudulent proprietors of this dishonest country, together with their dishonest politics, will be shattered. ...

In order to defeat the Kurds, the State is trying every possible method of destruction, from killing people one by one and it is associating the Turkish nation with its murders.”

B. Subsequent developments

39. The Government, in their additional observations, dated 3 October 2003, informed the Court that on 10 September 1996 the Ankara State Security Court had merged the fines given in eight cases¹ which amounted to 432,200,000 Turkish Liras (TRL). However, since the applicant had failed to pay on time, his fine was converted into a prison sentence. They further submitted that, by a decision of the Ankara State Security Court of 9 April 2003, the applicant's criminal records were erased.

40. By a letter dated 8 June 2004, the applicant informed the Court that he had been imprisoned for the first time between 22 November 1994 and 27 November 1995 and for a second time between 26 September 1996 and 11 March 1997. He stated that he had spent a total of one year, five months and twenty days in prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *E.K. v. Turkey* (no. 28496/95, §§ 34-40, 7 February 2002), *Erdoğan v. Turkey* (no. 25723/94, §§ 21-26, ECHR 2000-VI) and *Başkaya and Okçuoğlu v. Turkey* ([GC], nos. 23536/94 and 24408/94, §§ 25-27, ECHR 1999-IV).

42. Article 8 of Law No. 3713 prohibited any form of separatist propaganda. It was amended by Law No. 4126 on 27 October 1995, which reduced the length of prison sentences that could be imposed under section 8 of Law no. 3713 whilst increasing the level of fines.

43. Law No. 4126 also provided, in a transitional provision relating to section 2, that sentences imposed pursuant to Article 8 of Law no. 3713 would be automatically reviewed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

44. The applicant complained that while Article 8 § 2 of the Prevention of Terrorism Act (Law No. 3713), envisaged the imposition of a prison sentence on the owners or directors of a publishing house for the dissemination of separatist propaganda by means of periodicals, he was

1. The Government referred to the following books: An intellectual, an organisation and the Kurdish Question, On Kurdish Society, The Case of İsmail Beşikçi from the point of view of scientific methodology IV and I, The Great Plane Tree - The Kurdish Sage Musa Anter, The Fascism of 12 September and the PKK resistance, and Dysfunctional Prohibitions: Prohibitions of thought and fraud.

convicted and sentenced to imprisonment for the dissemination of separatist propaganda through books. He therefore maintained that the imposition of a prison sentence for his acts was not foreseeable. He relied on Article 7 § 1 of the Convention, which provides:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

45. The Government have not addressed this issue in their observations.

46. The Court has examined a number of cases raising similar issues to those in the present case and found a violation of Article 7 of the Convention when a publisher was convicted and sentenced under Article 8 § 2 of Law No. 3713 to a term of imprisonment in respect of a book (see *Başkaya and Okçuoğlu*, cited above, §§ 42-43, and *E.K.*, cited above, §§ 55-56). In the instant case, the Government have not submitted any facts or arguments capable of leading to a different conclusion. In the light of the foregoing, the Court considers that the imposition of a prison sentence on the applicant under Article 8 § 2 of Law No. 3713, in its form at the material time, in the criminal proceedings was incompatible with the principle “*nulla poena sine lege*” embodied in Article 7.

47. Accordingly, the Court concludes that there has been a violation of this provision.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

48. The applicant complained that there was an unjustified interference with his right to freedom of expression in that his right to impart information and ideas guaranteed by the Convention was undermined by his convictions for his role in the publication of all the above-mentioned books. He relied under Article 10 of the Convention, which provides insofar as relevant as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, [and] for the prevention of disorder or crime...”

A. Arguments of the parties

1. The applicant

49. The applicant submitted that there has been an unjustified interference with his right to freedom of expression. He claimed that he was the victim of a pattern of prosecutions in this regard and that the prohibited acts, as defined in the Prevention of Terrorism legislation, were too vaguely defined to be “prescribed by law”. In this connection, he averred that the aim of the restrictions in reality was to suppress democracy and public discussion of the Kurdish issue. He argued that Article 8 of Law No. 3713 satisfied neither the accessibility nor the foreseeable test. He contended that the interpretation given to the act of assisting members of prohibited organisations under Article 7 of Law No. 3713 was too broad for him to have anticipated prosecution or to have enabled him to regulate his conduct accordingly.

50. The applicant claimed that his convictions were wholly disproportionate and were not “necessary in a democratic society” for any of the legitimate aims set out in Article 10 § 2. In this connection, he contended that, apart from considering that a reference to the Kurdish people and a discussion of their treatment by the State was seen as an incitement to violence, the Government had failed to show a single example of an explicit call for violent measures in any of the publications. Therefore, the criminalisation of such material and opinions was contrary to the spirit of broadmindedness, pluralism and tolerance, which is central to the democratic values upheld by the Convention and the Council of Europe.

51. The applicant stated that the restrictions placed on his freedom of expression by Article 8 of Law no. 3713 cannot be considered as proportionate, as they were applied to a wide range of topics and materials, the large majority of which, like the applicant, have nothing to do with inciting violence or advocating terrorism. He maintained that his publications contained material of an academic or otherwise serious and responsible nature, much of which consisted of documentation which was in the public arena. He further pointed out that the measures applied by the Government were extreme in so far as they consisted of criminal sanctions, attracting substantial prison sentences and fines.

52. The applicant further submitted, in his post admissibility observations dated 21 August 2003, additional comments in respect of each of the books, alleging that the interference in each of these cases was unjustified.

2. The Government

53. The Government submitted that the interference with the applicant's freedom of expression was compatible with the provisions of the second paragraph of Article 10 of the Convention. The Government pointed out

that the interference in question was based on Article 8 § 2 of the Prevention of Terrorism Act and that it pursued a legitimate aim. They contended that the expression of an opinion of a kind which incites and provokes people to commit crimes cannot be protected under Article 10 of the Convention. In this connection, they referred to Article 17 of the Convention.

54 The Government considered that each impugned book referred to the actions of the PKK - an illegal terrorist organisation - as the Kurdish national struggle, and that the books contained separatist propaganda since they referred to a part of Turkey as Kurdistan. The Government averred that the contents of the books went beyond the bounds of acceptable criticism. Instead, they incited people to support the terrorist organisation and to riot. They affirmed that these books contained an invitation to violence and actions against the State.

55. The Government contented that the penalties imposed on the applicant could reasonably be regarded as answering a “pressing social need” and that the reasons adduced by the authorities for the applicant's convictions were “relevant and sufficient”.

56. The Government further pointed out that the PKK has been defined as a terrorist organisation by the European Union and that, therefore, the propaganda of this organisation cannot be considered to fall within the scope of freedom of thought and expression.

B. The Court's assessment

57. First, the Court observes that out of 19 separate criminal proceedings brought in respect of 32 books, 12 of them concerned books which were written by İsmail Beşikçi. The applicant was convicted in 11 of the criminal proceedings and, in three cases, the criminal proceedings against him were suspended by the State Security Courts.¹ The Court was not informed of the final outcome of the criminal proceedings in respect of the books “Tainted concepts: Science, equality, justice” and “The case concerning İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society V- The approval decision of the Court of Cassation and the rectification of judgment”.

58. The Court notes, in this connection, that apart from the book “The case concerning İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society V- The approval decision of the Court of Cassation and the rectification of judgment”, in all the criminal proceedings, charges were brought under the provisions of Law No. 3713 against the applicant. In

1. The criminal proceedings were suspended in respect of the following books: Lawless justice, Tainted values: Democracy, peace, brotherhood, and the 14 books written by Mr İsmail Beşikçi. In the latter case, the suspension of the proceedings occurred after conviction.

respect of three books written by the same author, the applicant was not prosecuted either because the statutory time-limit to bring criminal charges against him had expired¹ or because the domestic courts found that the book in question was the continuation of another book and did not necessitate a separate examination.²

59. In view of the above, the Court will review the material and information provided by the parties on a selective basis, since given the number of prosecutions and decisions, a detailed analysis of all cases would be impracticable. The Court will take into account the number of criminal proceedings brought against the applicant under Article 8 § 2 of Law No. 3713 alone and the relevant submissions of the parties.

60. It is clear and undisputed between the parties that there has been an interference with the applicant's right to freedom of expression because of the numerous criminal proceedings brought against him, which led to his successive convictions and sentence under the Prevention of Terrorism Act.

61. This interference would contravene Article 10 of the Convention unless it was “prescribed by law”, pursued one or more of the legitimate aims referred to in paragraph 2 of Article 10, and was “necessary in a democratic society” for achieving such aim or aims. The Court will examine each of these criteria in turn.

62. The Court has already found in previous cases that neither the conviction nor sentence of those involved in the publication of books under Article 8 § 2 of Law No. 3713, in its form at the material time, was prescribed by law (see, for example, the above cited *Başkaya and Okçuoğlu*, §§ 48-51, and *E.K.*, §§ 61-64). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in these previous cases. Accordingly, the Court considers that the conviction and sentence of the applicant in respect of the books “The Kurds: A Nation discovering itself”, “The case of İsmail Beşikçi from the point of scientific methodology, academic autonomy and the principles of a democratic society II and IV”, “An intellectual, an organisation and the Kurdish problem”, “On Kurdish Society”, “Rising consciousness”, “The Truncheon Republic”, “The great plane tree - The Kurdish sage Musa Anter” and the joint case concerning the 14 books written by Mr İsmail Beşikçi, were not prescribed by law as required by Article 10 of the Convention.

63. Having found that the interference was not prescribed by law in respect of these books, the Court does not consider it necessary to ascertain whether there has been compliance with the other requirements of paragraph 2 of Article 10 of the Convention.

2. The applicant was not prosecuted in respect of the following books: The incident of General Muğlalı; the thirty-three bullets and The way opened by the courts.

3. The book in question is The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society I - The Supreme Administrative Court cases, the indictment and the observations on the merits.

64. In view of the above, the Court concludes that there has been a violation of Article 10 of the Convention in respect of the criminal proceedings brought against the applicant under Article 8 § 2 of Law No. 3713 for his role in the publication of books and which led to his numerous convictions and sentences, including fines and imprisonment.

65. Furthermore, in view of the wide scale of the above conclusion, the Court does not consider it necessary make a separate examination of whether the interference in respect of other books published by the applicant, pursuant to different legal provisions, was justified.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

66. The applicant submitted that the confiscation of the aforementioned books constituted an interference with his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1, which provides insofar as relevant as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provision shall not, however, in anyway impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...”

67. The applicant complained that, due to the confiscation of his books, he has been unable to market or sell copies, and has therefore been deprived of revenue. He averred that the prosecutions, convictions and confiscations have adversely affected his reputation and that the interference did not strike a fair balance between the general interests of the community and the requirements of the protection of the individual's fundamental rights. He maintained that his convictions in respect of these books did not advance any of the legitimate aims set out in Article 1 of Protocol No.1, and that the only aim was to stifle information and political debate about the Kurdish problem in Turkey.

68. He further complained that, despite his acquittal in two cases concerning the books “The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society I - The Supreme Administrative Court cases, indictment and the observations on the merits” (paragraph 22 above) and “The incident of General Muğlalı; the thirty-three bullets” (paragraph 23 above), these books were confiscated and never returned to him.

69. The Government, in their observations dated 22 July 1996, maintained that Article 28 of the Constitution clearly defines situations in which the national courts may decide on the seizure of, for example, books. They referred to the relevant articles of the Press Law and Criminal Code in which the legislature has defined the freedom of the press and its limits.

They contended that the confiscation of the incriminated books was in accordance with the law and that there has been no violation of Article 1 of Protocol No. 1 of the Convention.

70. The Court observes that the confiscation of the books was an incidental effect of the applicant's prosecution and convictions. Having already determined that certain of the applicant's convictions constituted a breach of Article 10 of the Convention (paragraph 64 above), the Court finds it unnecessary to examine this complaint separately. The Court further considers that the applicant's confiscation claim, in the absence of any conviction, as regards the books "The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society I - The Supreme Administrative Court cases, indictment and the observations on the merits" (paragraph 22 above) and "The incident of General Muğlalı; the thirty-three bullets" (paragraph 23 above), has not been substantiated. Therefore, it does not raise an issue that needs to be examined separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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. Pecuniary Damage

72. The applicant claimed a total of 2,532,339 United States Dollars (USD), (approximately EUR 2,278,308), by way of pecuniary damage. His claim comprised:

- (a) USD 2,348,135 (approximately EUR 2,112,582) for the pecuniary damage and the loss of profit incurred by the seizure, confiscation and ban of his books;
- (b) USD 72,924 (approximately EUR 65,608) for the royalties owed to various authors;
- (c) USD 5,693 (approximately EUR 5,121) for the reimbursement of the fines which he had paid;
- (d) USD 102,232 (approximately EUR 91,976) for the legal fees owed to Mr Levent Kanat during the domestic proceedings; and
- (e) USD 6,355 (approximately EUR 5,717) for the fees owned to Mr Ali İmren for cover and page designs, etc.

73. The Government contested the applicant's claims. In this regard, the Government stressed that the Court, only in rare cases, awarded applicants specific sums for pecuniary damage on an equitable basis.

74. The Court dismisses the applicant's claims concerning loss of profits as being speculative. Moreover, it does not find a causal link between the violation found and the sums owed by the applicant to various authors and Mr Ali İmren. The Court finds excessive, in the absence of any pertinent documents or receipts, the amount requested by the applicant in respect of the legal fees of Mr Kanat during the domestic proceedings. Nonetheless, the Court accepts that the applicant, as a publisher, must have incurred some pecuniary loss due to the cumulative effects of the criminal proceedings. Making an equitable ruling on the basis of all the information in its possession, the Court awards the applicant EUR 14,500 under this head.

B. Non-pecuniary damage

75. The applicant claimed EUR 500,000 in respect of non-pecuniary damage. In this connection, he submitted, in particular, that due to the criminal proceedings he has been branded as a “terrorist” in peoples' minds and that he suffered many difficulties when he was in prison. He averred that the economic difficulties which he faced, the raids on his house and office, and the crank telephone calls which he received, caused him serious emotional stress.

76. The Government found the amount claimed exorbitant.

77. The Court considers that the applicant may be taken to have suffered a certain amount of distress in the circumstances of the case. Making its assessment on an equitable basis, it awards him EUR 3,000 for non-pecuniary damage.

C. Costs and expenses

78. The applicant claimed a total of 7,861 pounds sterling (GBP) (approximately EUR 11,274) for fees and costs incurred by his British lawyers and USD 25,798 (approximately EUR 23,210) for consultation fees, costs and expenses incurred both before the Court and in the domestic proceedings by his Turkish lawyer Mr Levent Kanat. He further requested GBP 12,592 (approximately EUR 18,060) in respect of costs and expenses incurred by the Kurdish Human Rights Project (KHRP) in assisting with the application.

79. The applicant submitted documentation, such as fee notes, in support of his claim, with the exception of the costs and expenses incurred by Mr Levent Kanat.

80. The Government contested the amount of the claim.

81. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation or violations found, and are reasonable as to quantum, are recoverable under Article 41 (see, for example, *Şahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003). It further reiterates that, where it finds that there has been a

violation of the Convention, the Court may award the applicant the costs and expenses incurred before the national courts for the prevention or redress of the violation (see, among other authorities, *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, p. 14, § 36, and *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2334, § 63).

82. The Court notes that this case involved complex issues of fact and law, requiring a detailed examination. However, it considers the applicant's claim excessive, not having been wholly necessary or reasonable, with the exception of translation and administrative costs. In respect of the costs and expenses incurred before the domestic courts, the applicant has failed to submit any receipt or invoices demonstrating that they were necessarily and reasonably incurred.

83. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant EUR 15,000 for the costs and expenses incurred before the Court.

D. Default interest

84. 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. *Holds* that there has been a violation of Article 7 of the Convention;
2. *Holds* that there has been a violation of Article 10 of the Convention in respect of the applicant's convictions under Article 8 § 2 of Law No. 3713;
3. *Holds* that it is not necessary to examine separately the applicant's complaints concerning his convictions pursuant to other domestic legal provisions under either Article 10 of the Convention, or the confiscation of certain books under Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 14,500 (fourteen thousand and five hundred euros) in respect of pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of settlement;

- (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of settlement;
- (iii) EUR 15,000 (fifteen thousand euros) in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into the bank account identified by the applicant in the United Kingdom;
- (iv) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

THE CHRONOLOGY OF THE CRIMINAL PROSECUTIONS

1. *“The Kurds: A Nation discovering itself”*

05.93 Published

27.08.93 Prosecutor's indictment

20.12.93 Conviction by the Istanbul State Security Court (“SSC”) under Article 8 § 2 of Law No. 3713

Sentence: 6 months' imprisonment; 50,000,000 TRL fine

Book confiscated under Article 36 of the Criminal Code

05.07.94 Confirmation by Court of Cassation (“CC”)

Case re-opened

19.04.96 Conviction by Istanbul SSC under Article 8 § 2 of Law No. 3713 (hereafter Article 8 § 2)

Sentence: 50,900,000 TRL fine; previous sentence suspended.

2. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society II - The Defence”*

01.93 Published

27.12.93 Prosecutor's indictment

14.06.94 Interim conviction by the Ankara SSC under Article 8 § 2

Sentence: 6 months' imprisonment; 100,000,000 TRL fine (text of the decision not submitted to the Court)

Book confiscated under Article 36 of the Criminal Code

29.12.94 Confirmation by CC with reduction in fine to 50,000,000 TRL.

3. *“An intellectual, an organisation and the Kurdish problem”*

10.93 Published

01.03.94 Prosecutor's indictment

16.06.94 Interim conviction by the Ankara SSC under Article 8 § 2

Sentence: 6 months' imprisonment; 100,000,000 TRL fine (text of the decision not submitted to the Court)

Book confiscated under Article 36 of the Criminal Code

29.12.94 Confirmation by CC with reduction in fine to 50,000,000 TRL

Case re-opened

24.11.95 Conviction by Ankara SSC under Article 8 § 2

Sentence: an unspecified fine (text of the decision not submitted to the Court).

4. *“On Kurdish society”*

04.93 Published

01.03.94 Prosecutor's indictment

16.06.94 Interim conviction by the Ankara SSC under Article 8 § 2

Sentence: 6 months' imprisonment; 100,000,000 TRL fine (text of the decision not submitted to the Court)
 Book confiscated under Article 36 of the Criminal Code
 29.12.94 Confirmation by CC with reduction in fine to 50,000,000 TRL
 Case re-opened
 24.11.95 Conviction by Ankara SSC under Article 8 § 2
 Sentence: an unspecified fine (text of the decision not submitted to the Court).

5. *“Rising consciousness” (“Bilincin yükselişi”)*

06.93 Published
 18.10.93 Prosecutor's indictment
 16.06.94 Conviction by the Ankara SSC under Article 8 § 2
 Sentence: 6 months' imprisonment; 100,000,000 TRL fine
 Book confiscated under Article 36 of the Criminal Code
 29.12.94 Confirmation by CC with reduction in fine to 50,000,000 TRL
 Case re-opened
 24.11.95 Conviction by Ankara SSC under Article 8 § 2
 Sentence: 50,900,000 TRL fine; the applicant to be released if still in detention
 26.03.96 CC dismissed applicant's appeal.

6. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society V - The approval decision of the Court of Cassation and the rectification of the judgment”*

07.92 Published
 13.10.93 Prosecutor's indictment
 02.02.94 Conviction by the Ankara Criminal Court under Article 268 of the Criminal Code
 Sentence: 9 months' imprisonment
 Books confiscated under Article 36 of the Criminal Code
 27.05.94 Applicant's appeal to the Court of Cassation. Information about the further procedure was not submitted to the Court.

7. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society I - The Supreme Administrative Court cases, the indictment and the observations on the merits”*

01.93 Published
 27.12.93 Prosecutor's indictment
 14.06.94 Interim decision of the Ankara SSC to dismiss the case (text of the decision not submitted to the Court).

8. *“The incident of General Muğlalı; the thirty-three bullets”*

03.92 Published

05.01.94 Prosecutor's decision of non-prosecution because of a statutory time-bar

9. *“The case of İsmail Beşikçi from the point of view of scientific methodology, academic autonomy and the principles of a democratic society IV - Application to the Court of Cassation”*

04.93 Published

05.01.94 Prosecutor's indictment

18.10.94 Conviction by the Ankara SSC under Article 8 § 2

Sentence: 6 months' imprisonment; 100,000,000 TRL fine

17.02.95 Confirmation CC with reduction in fine to 50,000,000 TRL

Case re-opened

24.11.95 Conviction by Ankara SSC under Article 8 § 2

Sentence: 50,900,000 TRL fine

Books confiscated under Article 36 of the Criminal Code

19.06.96 CC dismissed applicant's appeal.

10. *“The way opened by the courts”*

04.93 Published

10.03.94 the author is convicted under Article 8. Two books confiscated under Article 36 of the Criminal Code. No criminal proceedings were brought against the applicant because of a statutory time-bar.

11. *“Tainted concepts: science, equality, justice”*

09.94 Published

23.11.94 Prosecutor's indictment

20.12.95 Conviction by the Istanbul SCC under Article 8 § 2

Sentence: 100,900,000 TRL fine

Book confiscated under Article 36 of the Criminal Code

26.05.97 CC quashed the judgment of the Istanbul SCC.

12. *“Lawless justice”*

09.94 Published

23.11.94 Prosecutor's indictment

01.08.95 Conviction by the Istanbul SCC under Article 8 § 2

Sentence: 5 months' imprisonment; 41,000,000 TRL fine

26.05.97 CC quashed the judgment of the Istanbul SCC

12.02.98 Suspension of the proceedings against the applicant for three years pursuant to Article 1 of Law no. 4304 by the Istanbul SCC.

13. *“Tainted values: democracy, peace, brotherhood”*

10.94 Published

07.12.94 Prosecutor's indictment
 01.08.95 Conviction by the Istanbul SCC under Article 8 § 2
 Sentence: 5 months' imprisonment; 41,666,666 TRL fine
 The books confiscated under Article 36 of the Criminal Code
 27.05.97 CC quashed the judgment of the Istanbul SCC
 12.02.98 Suspension of the proceedings against the applicant for three years pursuant to Article 1 of Law no. 4304 by the Istanbul SCC.

14. “Dysfunctional prohibitions: prohibitions of thought and fraud”

11.94 Published
 07.12.94 Prosecutor's indictment
 05.07.95 Conviction by the Ankara SCC under Article 8 § 2
 07.03.96 Judgment of the Istanbul SCC quashed by the CC
 08.07.96 Conviction by the Ankara SCC under Article 8 § 3 of Law no.3713
 Sentence: 26,800,000 TRL fine.
 15.07.96 Judgment became final as no appeal was lodged against it.

15. The joint prosecution in respect of 14 books written by İsmail Beşikci

Books published in 1991 and 1992
 September 1991 and April 1993 Prosecutor's indictments
 On an unspecified date the cases are joined
 02.07.93 Conviction by the Ankara SCC under Article 8 § 2
 21.03.94 Judgment of the Ankara SCC quashed by the CC
 30.06.94 Conviction by the Ankara SCC under Article 8 § 2
 06.12.94 Judgment of the Ankara SCC quashed by the CC
 16.02.95 Conviction by the Ankara SCC under Article 8 § 2
 Sentence: 20 months' imprisonment and 216,666,666 TRL fine
 The books confiscated under Article 36 of the Criminal Code
 26.10.95 CC dismissed the applicant's appeal
 Case re-opened
 27.12.95 Conviction by the Ankara SCC under Article 8 § 2
 04.03.97 Judgment of the Ankara SCC quashed by the CC
 22.05.97 Conviction by the Ankara SCC under Article 8 § 2
 21.05.98 Judgment of the Ankara SCC quashed by the CC
 21.07.98 Suspension of the proceedings against the applicant for three years pursuant to Article 1 of Law no. 4304 by the Ankara SCC.

16. “The Truncheon Republic”

10.92 Published
 19.03.93 Prosecutor's indictment
 02.06.94 Conviction by the Istanbul SCC under Article 8 § 2
 Sentence: 82,333,333 TRL fine
 14.12.94 Applicant's appeal dismissed by the CC.

17. “The Fascism of 12 September and the PKK resistance”

11.92 Published

15.07.93 Prosecutor's indictment

16.11.93 Conviction by the Ankara SCC under Article 7 § 2 of the Law no. 3713

05.04.94 Judgment of the Ankara SCC quashed by the CC

23.06.94 Conviction by the Ankara SCC under Article 8 § 1 of the Law no. 3713

Sentence: 2 years' imprisonment and 100,000,000 TRL fine

The books confiscated under Article 36 of the Criminal Code

On an unspecified date CC quashed the judgment of the Ankara SCC (text of decision not submitted to the Court)

24.11.95 Conviction by the Ankara SCC (text of the decision not submitted to the Court)

On an unspecified date CC dismissed the applicant's appeal (text of the decision not submitted to the Court).

18. “The screaming breath of the murdered miner - the Bosphorus occupation”

10.92 Published

14.01.93 Prosecutor's indictment

05.04.94 Conviction by the Ankara SCC under Article 7 § 2 of Law no. 3713

30.09.94 Judgment of the Ankara SCC quashed by the CC

20.12.94 Conviction by the Ankara SCC under Article 7 § 5 of the Law no. 3713

Sentence: 6 months' imprisonment; 50,000,000 TRL fine

The books were confiscated under Article 36 of the Criminal Code

On an unspecified date the judgment became final as the applicant missed the deadline to lodge an appeal.

19. “The great plane tree - The Kurdish sage Musa Anter”

07.93 Published

02.12.93 Prosecutor's indictment

16.02.95 Conviction by the Istanbul SCC under Article 8 § 2 (text of the decision not submitted to the Court)

Sentence: 6 months' imprisonment; 50,000,000 TRL fine

The books were confiscated under Article 36 of the Criminal Code

On an unspecified date the CC dismissed the applicant's appeal (text of the decision not submitted to the Court)

Case re-opened

24.11.95 Conviction by the Istanbul SCC under Article 8 § 2

Sentence: 50,900,000 TRL fine, previous sentence suspended.