



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

SECOND SECTION

**CASE OF YILDIZ YILMAZ v. TURKEY**

*(Application no. 66689/01)*

JUDGMENT

STRASBOURG

11 October 2005

**FINAL**

*11/01/2006*

*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 Yıldız Yılmaz 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. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 20 September 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 66689/01) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mrs Yıldız Yılmaz, on 14 April 2000.

2. The applicant was represented by Mrs Z.S. Özdoğan, a lawyer practising in İzmir. In the instant case, the Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 May 2002 the Court decided to communicate the application to the Government.

4. 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).

5. On 30 November 2004 the Chamber decided to apply the accelerated procedure under Article 29 § 3 of the Convention and examine the admissibility and merits at the same time.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1960 and lives in Uşak.

8. On 15 December 1997 the applicant was arrested by the Anti-Terrorist Branch of the İzmir Police Headquarters on suspicion of membership of an illegal armed organisation, the Revolutionary Communists' Union of Turkey ("the TIKB", *Türkiye İhtilalci Komünistler Birliği*) and placed in custody.

9. In her statement of 18 December 1997 the applicant declared that she aided and abetted the members of the TIKB and that she provided information to the TIKB members who were held in prison.

10. On 19 December 1997 the applicant was brought before the Public Prosecutor at the İzmir State Security Court and then before the judge, where she denied all the charges against her. She declared that her statement in police custody was taken under duress and that she had been given electric shocks. The judge ordered the applicant's detention pending trial.

11. On 23 December 1997 the Public Prosecutor at the İzmir State Security Court filed an indictment accusing the applicant of membership of an illegal terrorist organisation, aiding and abetting the organisation, providing information to its members who were imprisoned and participating in the demonstrations organised by the organisation.

12. On 4 June 1998 the İzmir State Security Court convicted the applicant under Article 169 of the Criminal Code and sentenced her to three years and nine months' imprisonment.

13. On 23 June 1998 the applicant appealed against this decision to the Court of Cassation.

14. On 20 September 1999 the Court of Cassation upheld the decision of State Security Court.

15. On 14 October 2000 the Court of Cassation's decision was deposited with the registry of İzmir State Security Court.

### II. RELEVANT DOMESTIC LAW

16. A full description of the domestic law may be found in *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that she 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 İzmir State Security Court. In respect of her complaints, she invoked Articles 6 §§ 1, 2 and 3 of the Convention, which in so far as relevant reads as follows:

“1. In the determination of ... any criminal charge against her, everyone is entitled to a fair and public 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:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

#### A. Admissibility

18. The Government argued under Article 35 of the Convention that the application must be rejected as it was not lodged with the Court within six months from the date of delivery of the State Security Court’s decision which is 4 June 1998.

19. The Court has previously rejected the argument that the six-month period should run from the date of the State Security Court’s judgment (see *Çolak v. Turkey (no. 1)*, no. 52898/99, § 27, 15 July 2004 and *Özdemir v. Turkey*, no. 59659/00, § 26, 6 February 2003). It notes that on 20 September 1999 the Court of Cassation upheld the decision of the State Security Court. On 14 October 2000 the Court of Cassation’s decision was deposited with the registry of İzmir State Security Court. The Court observes that the application was lodged with the Registry on 14 April 2001 which is exactly six months after the said date. Accordingly, the Court rejects the Government’s preliminary objection regarding the six-month rule.

20. The Government further maintained that the applicant’s complaint in respect of the independence and impartiality of the İzmir State Security Court must be rejected for non-exhaustion of domestic remedies. They

maintained that the applicant had not invoked this complaint before the domestic courts.

21. The Court reiterates that it has already examined similar preliminary objections of the Government in respect of the non-exhaustion of domestic remedies (see *Vural v. Turkey*, no. 56007/00, § 22, 21 December 2004, *Çolak*, cited above, § 24, and *Özel*, cited above, § 25). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases and rejects the Government's objection.

22. 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 application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

## **B. Merits**

### *1. As to the independence and impartiality of the İzmir State Security Court*

23. The Government maintained that the State Security Courts had been established by law to deal with threats to the security and integrity of the State. They submitted that in the instant case there was no basis to find that the applicant could have any legitimate doubts about the independence of the İzmir State Security Court. They referred to the constitutional amendment of 1999 whereby it is provided that the military judges could no longer sit on such courts.

24. The Court notes that it has examined similar cases in the past and has concluded that there was a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir*, cited above, §§ 35-36).

25. The Court sees no reason to reach a different conclusion in this case. It is understandable that the applicant who was prosecuted in a State Security Court for aiding and abetting 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, she could legitimately fear that the İzmir State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's 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*).

26. In the light of the above the Court finds that there has been a violation of Article 6 § 1 of the Convention in this respect.

2. *As to the fairness of the proceedings before the İzmir State Security Court*

27. Having regard to its finding that the applicant's right to a fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine her complaints under Article 6 §§ 2 and 3 (c) of the Convention (see *Incal*, cited above, § 74, and *Çıraklar*, cited above, § 45).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant requested the Court to award her 9,000 euros (EUR) in respect of pecuniary damage and EUR 35,000 in respect of non-pecuniary damage.

30. The Government submitted that these claims were excessive and unacceptable.

31. On the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. Moreover, the applicant's claims in respect of pecuniary damage are not supported by any evidence. The Court cannot therefore allow them.

32. The Court further considers that the finding of a violation of Article 6 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant in this respect (see *Incal*, cited above, p. 1575, § 82, and *Çıraklar*, cited above, § 45).

33. 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, 12 May 2005).

## **B. Costs and expenses**

34. The applicant claimed EUR 3,000 with respect to the reimbursement of any costs and expenses in connection with the proceedings before the Court.

35. The Government contested the claim.

36. The Court may make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

37. Making its own estimate based on the information available, and having regard to the criteria laid down in its case-law (see *Vural*, cited above, § 45), the Court awards the applicant EUR 1,000 for the costs and expenses claimed.

## **C. Default interest**

38. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint relating to the independence and impartiality of the İzmir State Security Court;
3. *Holds* that it is not necessary to consider the applicant's complaints under Article 6 §§ 2 and 3 (c) of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, such sum to be converted into Turkish liras at the rate applicable at the date of

payment and to be paid into the bank account in Turkey indicated by the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH  
Deputy Registrar

J.-P. COSTA  
President