



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

THIRD SECTION

CASE OF TANRIKOLU AND OTHERS v. TURKEY

(Application no. 45907/99)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

12/04/2006

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 Tanrikolu and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr R. TÜRMESEN,

Mr C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Ms R. JAEGER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 45907/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seventeen Turkish nationals, Mr Temer Tanrikolu, Mr İbrahim Bağdu, Mr M. Emin Tanrikolu, Mr Mehmet Tayşun, Mr A. Menaf Akyol, Mr M. Emin Tayşun, Mr Lokman Akyol, Mr Hamo Tayşun, Mr Ramazan Atak, Mr Hıdır Şengil, Mr Methi Tayşun, Mr Abdurrahman Mungan, Mr M. Sait Çek, Mr Faruk Dilek, Mr Ramazan Tanrikolu, Mr Hasan Arsu and Mr Abdulaziz Arsu ("the applicants"), on 4 October 1997.

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

3. On 22 October 2002 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the applicants' right to a fair hearing by an independent and impartial tribunal and their right to legal assistance during police custody to the Government. By a decision dated 28 September 2004 the Court further decided to examine the merits of the application at the same time as its admissibility under the provisions of Article 29 § 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants, Temer Tanrıkolu, İbrahim Bağdu, M. Emin Tanrıkolu, Mehmet Tayşun, A. Menaf Akyol, M. Emin Tayşun, Lokman Akyol, Hamo Tayşun, Ramazan Atak, Hıdır Şengil, Methi Tayşun, Abdurrahman Mungan, M. Sait Çek, Faruk Dilek, Ramazan Tanrıkolu, Hasan Arsu and Abdulaziz Arsu, are Turkish nationals, who were born in 1977, 1948, 1960, 1956, 1950, 1953, 1971, 1950, 1960, 1977, 1973, 1975, 1964, 1974, 1975, 1949 and 1973 respectively. They all live in Silopi in south-east Turkey.

5. Between November 1992 and February 1993 the applicants were taken into police custody in Silopi by policemen on suspicion of aiding and abetting an illegal organisation, namely the PKK.

6. At the end of their police custody, the applicants were brought before the Şırnak Magistrate's Court in Criminal Matters and were subsequently placed in detention on remand.

7. On an unspecified date in 1993 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment. He accused the applicants of aiding and abetting an illegal organisation, and called for them to be sentenced pursuant to Article 169 of the Criminal Code.

8. The applicants were all released pending trial.

9. On 6 February 1996 the Diyarbakır State Security Court, which was composed of three judges including a military judge, found the applicants guilty as charged and sentenced them to different terms of imprisonment, ranging between two years and six months and three years and nine months.

10. On 9 June 1997 the Court of Cassation, upholding the Diyarbakır State Security Court's reasoning and assessment of evidence, dismissed the applicants' request for appeal.

II. THE RELEVANT DOMESTIC LAW

11. 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

12. The applicants complained in the first place that they had not received a fair trial by an independent and impartial tribunal due to the presence of a military judge on the bench of the Diyarbakır State Security Court, which tried and convicted them. They further complained that they had been deprived of their right to the assistance of a lawyer during their police custody. In this connection, they invoked Article 6 §§ 1 and 3 (c) of the Convention, which in so far as relevant reads as follows.

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by 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. The Government's objections

1. As regards the independence and impartiality of the State Security Court

a) Six months rule

13. The Government argued under Article 35 of the Convention that the applicants' complaint in respect of the independence and impartiality of the Diyarbakır State Security Court must be rejected for failure to comply with the six-month rule. In this respect, they maintained that as the applicants were complaining of the lack of independence and impartiality of the State Security Court, they should have lodged their application with the Court within six months of the date on which that court rendered its judgment, namely 6 February 1996.

14. The Court reiterates that it has already examined similar objections of the Government in respect of the non-compliance with the six-month rule in the past and has rejected them (see *Özdemir v. Turkey*, no. 59659/00, § 29, 6 February 2003, and *Doğan and Keser v. Turkey*, nos. 50193/99 and 50197/99, § 17, 24 June 2004). The Court finds no particular circumstances

in the instance case which would require it to depart from its findings in the above-mentioned cases.

15. Accordingly, the Court rejects this part of the Government's objection.

b) Non-exhaustion of domestic remedies

16. The Government further argued under Article 35 of the Convention that the applicants' complaint in respect of the independence and impartiality of the Diyarbakır State Security Court must be rejected for non-exhaustion of domestic remedies. They maintained that the applicants had not invoked their complaint before the domestic courts. In this respect, they refer to the case-law of the Court (in particular *Ahmet Sadık v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V).

17. The Court reiterates that it has already examined similar 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 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. Accordingly, the Court rejects this part of the Government's objection.

2. As regards the applicants' complaint concerning lack of legal assistance during their police custody

19. The Government maintained that the applicants' complaint concerning their deprivation of legal assistance during police custody should be declared inadmissible for being introduced out of six-months. In this respect, they stated that this complaint should have been lodged within six months following the end of the applicants' police custody. However, the applicants lodged their complaint with the Court on 4 October 1997, almost five years after the end of their police custody.

20. The Court reiterates that Article 6 applies even at the stage of a preliminary investigation by the police and that paragraph 3 is one element, amongst others, of the concept of a fair trial in criminal proceedings as set forth in paragraph 1 and may, for example, be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see, in this respect, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, §36; *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 54, § 62).

21. As the Court also pointed out in the above-cited judgments, the manner in which Article 6 § 3 (c) is applied during the preliminary investigation depends on the special features of the proceedings involved

and on the circumstances of the case; in order to determine whether the aim of Article 6 – a fair trial – has been achieved, regard must be had to the entirety of the proceedings conducted in the case (*ibid.*, pp. 13-14, § 38, and pp. 54-55, § 63, respectively).

22. In the light of the foregoing, in order to determine whether the applicants' deprivation of legal assistance was likely to seriously prejudice the fairness of the impugned proceedings, the Court should examine the proceedings in its entirety.

23. Therefore, this part of the Government's objections cannot be upheld.

B. Admissibility

24. 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.

C. Merits

1. As to the independence and impartiality of the Diyarbakır State Security Court

25. The Government maintained that the state security courts had been established by law to deal with threats to the security and integrity of the State. They submitted that in the instant case there was no basis to find that the applicants could have any legitimate doubts about the independence of the Diyarbakır State Security Court. The Government further referred to the constitutional amendment of 1999 whereby military judges could no longer sit on state security courts.

26. The Court notes that it has examined similar cases in the past and has concluded that there was a violation of Article 6 § 1 (see *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

27. The Court sees no reason to reach a different conclusion in this case. It is understandable that the applicants who were prosecuted in a State Security Court for being members of an illegal organisation should have been apprehensive about being tried by a bench which included a regular

army officer and member of the Military Legal Service. On that account, they could legitimately fear that the Diyarbakır State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicants' fears 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*).

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

2. As to the remainder of the complaints under Article 6

29. Having regard to its finding that the applicants' right to a fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine the applicant's complaints under Article 6 § 3 (c) (*Epözdemir v. Turkey*, no. 43926/98, § 24, 28 October 2004, and *Süleyman Yıldırım v. Turkey*, no. 40518/98, § 39, 29 July 2004).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants each claimed 4,000 euros (EUR) in respect of pecuniary and EUR 4,000 in respect of non-pecuniary damage.

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

33. 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 applicants' claims in respect of pecuniary damage are not supported by any evidence whatsoever. The Court cannot therefore allow them.

34. 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).

35. Where the Court finds that applicants have been convicted by a tribunal which is not independent and impartial within the meaning of Article 6 § 1, it considers that, in principle, the most appropriate form of

relief would be to ensure that the applicants are granted in due course a retrial by an independent and impartial tribunal (*Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

B. Costs and expenses

36. The applicants also claimed a total of EUR 47,683 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

37. The Government submitted that the claim in respect of costs and expenses had not been duly documented.

38. 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).

39. Making its own estimate based on the information available, and having regard to the criteria laid down in its case-law (see, among other authorities, *Vural*, cited above, § 45), the Court awards the applicants, jointly, the global sum of EUR 1,000 for the costs and expenses claimed.

C. Default interest

40. 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 Diyarbakır State Security Court;
3. *Holds* that it is not necessary to consider the applicants' complaint under Article 6 § 3 (c) of the Convention;
4. *Holds* that the finding of a violation of the Convention constitutes in itself sufficient just satisfaction for non-pecuniary damage;

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 1,000 (one thousand euros) in respect of costs and expenses to be converted into Turkish liras at the rate applicable at the date of the settlement and exempt from all taxes and duties;

(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 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President