



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

SECOND SECTION

**CASE OF BULUT v. TURKEY**

*(Application no. 49892/99)*

JUDGMENT

STRASBOURG

22 November 2005

**FINAL**

*22/02/2006*

*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 Bulut 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 Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 November 2005,

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

## PROCEDURE

1. The case originated in an application (no. 49892/99) 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 a Turkish national, Hüseyin Bulut (“the applicant”), on 1 March 1999.

2. The applicant was represented by Mrs Y.İ. Koluacıık, a lawyer practising in Malatya. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 27 January 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicant’s right to a fair hearing by an independent and impartial tribunal to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952. He was detained in Burdur prison at the time of lodging his application.

6. On 28 March 1994 an arrest warrant was issued in respect of the applicant.

7. On 14 April 1994 the public prosecutor at the Malatya State Security Court filed an indictment, accusing the applicant together with two other co-accused of membership of an illegal armed organisation, namely the Marxist-Leninist Communist Party. The public prosecutor requested that the applicant be convicted and sentenced under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713.

8. On 19 October 1995 the Malatya State Security Court decided to separate the proceedings in respect of the applicant as he could not be found.

9. On 30 August 1996 the applicant was arrested and taken into custody by the police. On 6 September 1996 he was interrogated by two police officers.

10. On 10 September 1996 he was brought before the public prosecutor and the State Security Court. He denied his statements made in police custody.

11. On 30 October 1996 an additional indictment was submitted by the public prosecutor at the Istanbul State Security Court.

12. On 20 January 1998 the Malatya State Security Court, composed of two civilian judges and a military judge, convicted the applicant under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713, and sentenced him to twelve years and six months' imprisonment.

13. On 2 March 1998 the applicant appealed against the judgment of the Malatya State Security Court.

14. On 7 December 1998 the Court of Cassation held a hearing and on the same day upheld the above judgment.

## II. THE RELEVANT DOMESTIC LAW

15. The relevant domestic law and practice in force at the material time are outlined in the judgments of *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002), and *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003).

## THE LAW

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

16. The applicant complained that he had been denied a fair hearing on account of the presence of a military judge on the bench of the Malatya

State Security Court which tried and convicted him. He claimed that in refusing his request for the examination of the signature on the deposition, and in relying on the statements of witnesses whom he did not confront, the court violated his right to a fair hearing. He relied on Article 6 of the Convention, which in so far as relevant reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

### A. Admissibility

17. The Government argued under Article 35 § 1 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Malatya 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.

18. The Court reiterates that it has already examined and rejected this preliminary objection of the Government in similar cases (see *Vural v. Turkey*, no. 56007/00, § 22, 21 December 2004, *Çolak v. Turkey (no. 1)*, no. 52898/99, § 24, 15 July 2004, and *Özel*, cited above, § 25).

19. In view of the above, the Court rejects the Government's objection in the present case.

20. In the light of its established case law (see, amongst many authorities, *Çiraklar v. Turkey*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII), and in view of the materials submitted to it, the Court considers that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

### B. Merits

#### 1. Independence and impartiality of the State Security Court

21. The Court has examined a large number of cases raising similar issues to those in the present case and found a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

22. As to the instant case, the Court considers that the Government have not submitted any facts or convincing arguments capable of leading to a different conclusion. It considers it understandable that the applicant –

prosecuted in a State Security Court for offences relating to “national security” – should have been apprehensive about being tried by a bench which included a regular army officer, who was a member of the Military Legal Service. On that account he could legitimately fear that the State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. Consequently, the applicant’s doubts about that court’s independence and impartiality may be regarded as objectively justified (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1568, § 72 *in fine*).

23. In conclusion, the Court considers that the State Security Court which tried and convicted the applicant was not an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. Accordingly, there has been a violation of this provision.

## 2. *Fairness of the proceedings*

24. Having regard to its finding of a violation of the applicant’s right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 of the Convention relating to the fairness of the proceedings before it (see, among other authorities, *Incal*, cited above, § 74).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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.”

26. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents, failing which the Chamber may reject the claim in whole or in part.

27. In the instant case, on 21 June 2004, the applicant was requested to submit his claims for just satisfaction. He did not submit any such claims within the specified time-limit.

28. In view of the above, the Court makes no award under Article 41 of the Convention.

29. Nevertheless, 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*, no. 46221/99 [GC], § 210, ECHR 2005-...).

## 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 Malatya State Security Court;
3. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 of the Convention;

Done in English, and notified in writing on 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President