



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

THIRD SECTION

CASE OF BİÇ AND OTHERS v. TURKEY

(Application no. 55955/00)

JUDGMENT

STRASBOURG

2 February 2006

FINAL

03/07/2006

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 Biç 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 R. TÜRMEŒ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 55955/00) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Turkish nationals, Ms Layihe Biç, Mr Resul Biç, Ms Zehra Biç and Ms Hamdiye Biç (“the applicants”), on 17 January 2000. The first applicant is the wife and the second, third and fourth applicants are the children of İhsan Biç, who died on 9 October 1999.

2. The applicants, who had been granted legal aid, were represented by Mr Tanrıkulu, 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. The applicants complained, in particular, about the length of detention of remand of İhsan Biç and the length and fairness of the proceedings brought against him.

4. The application was allocated to the Third 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.

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

6. By a decision of 2 December 2004, the Court declared the application partly admissible.

7. The applicants, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicants Ms Layihe Biç, Mr Resul Biç, Ms Zehra Biç and Ms Hamdiye Biç, were born in 1962, 1982, 1984 and 1993 respectively and live in the village of Yukarıharım, attached to the province of Diyarbakır.

9. On 13 October 1993 İhsan Biç was arrested by security forces in Bismil on suspicion of having participated in an attack on a military convoy, organised by the PKK. In his statement to the gendarmes, he confessed to being a member of the PKK and having participated in the attack against the military convoy.

10. On 8 November 1993 İhsan Biç was brought before the public prosecutor. The same day he was brought before the investigating judge at the Diyarbakır State Security Court, who subsequently ordered his detention on remand. İhsan Biç was accordingly sent to Batman prison.

11. On 1 December 1993 the public prosecutor initiated criminal proceedings against İhsan Biç in the Diyarbakır State Security Court. In his indictment, he accused him of membership of an illegal organisation, of aiding and abetting the members of this organisation and of having participated in an attack that had been aimed against the security forces. He asked the court to sentence him under Article 125 of the Criminal Code.

12. On 19 September 1995 the Diyarbakır State Security Court concluded that there was insufficient evidence to prove that İhsan Biç had taken part in any armed attack, but found him guilty of membership of an illegal organisation. He was accordingly sentenced to twelve years and six months' imprisonment pursuant to Article 168 § 2 of the Criminal Code. The court further ordered his transfer to the Diyarbakır Prison.

13. On 25 September 1995 İhsan Biç appealed.

14. On 2 October 1996 the Court of Cassation quashed the decision of the State Security Court and sent the case file back for re-examination.

15. The proceedings recommenced before the Diyarbakır State Security Court. The first-instance court decided to keep İhsan Biç in detention on remand during the course of the trials. While the proceedings continued, İhsan Biç was twice operated upon a stomach complaint. At a later date, he was also diagnosed with hepatitis B and subsequently died in the hospital on 9 October 1999 due to liver cirrhosis.

16. The Diyarbakır State Security Court decided to discontinue the criminal proceedings against İhsan Biç after his death.

THE LAW

ALLEGED VIOLATION OF ARTICLES 5 AND 6 OF THE CONVENTION

17. The applicants complained under Article 5 of the Convention about the length of detention on remand of İhsan Biç. They further maintained under Article 6 of the Convention that İhsan Biç was not tried before an independent and impartial court and that the length of the proceedings brought against him exceeded the reasonable time.

18. The Court recalls that a person, non-governmental organisation or a group of individuals must, in order to be able to lodge a petition in pursuance of Article 34, claim “to be the victim of a violation ... of the rights set forth in the Convention...” While it is true the rules of admissibility governed by Article 35 must be applied with some degree of flexibility and without excessive formalism, Article 34 requires that an individual applicant should claim to have been actually affected by the violation alleged (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX and *Fairfield and others v. the United Kingdom*, 24790/04, 8 March 2005). Regard should also be had to the object and purpose of the Convention in general, which in so far as it constitutes a treaty for the collective enforcement of human rights and fundamental freedoms must be interpreted and applied so as to make its safeguards practical and effective.

19. The Court reiterates that the system of individual petition provided under Article 34 of the Convention excludes applications by way of *action popularis*. The concept of victim must, in theory, be interpreted autonomously. Therefore, in order for an applicant to be able to claim to be a victim of a violation of the Convention, he must be able to show that he has been directly affected by the impugned measure (see *Sanles and Sanles v. Spain* (dec.), no. 48335/99, 26 October 2000).

20. Turning to the particular circumstances of the case, the Court observes that İhsan Biç died on 9 October 1999 and the present application was lodged with the Court on 17 January 2000 by his relatives; approximately three months after his death. In this connection, the Court recalls that in various cases where an applicant died in the course of the proceedings, it has taken into account the statements of the applicant’s heirs or close family members who expressed the wish to pursue the proceedings before the Court (see in this respect *Karner*, cited above, and *Dalban v. Romania* [GC], no. 28114/95, §39, ECHR 1999-VI). The Court notes however that the present case must be distinguished from those cases which were introduced by the applicants themselves and only continued by their relatives after their subsequent death.

21. The Court notes that it is clear from the submissions of the applicants that they do not maintain that they were personally affected by the alleged violations - neither by the length of İhsan Biç's detention nor by the length of the proceedings brought against him. The complaints under Articles 5 and 6 are brought solely on behalf of İhsan Biç, who died in 1999 due to liver cirrhosis.

22. The Court recalls that individuals, who are the next-of-kin of persons who have died in circumstances giving rise to issues under Article 2 of the Convention, may apply as applicants in their own right; this is a particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system. However complaints brought under Articles 5 and 6 of the Convention do not fall within this category. Furthermore, in the *Sanles and Sanles* decision (cited above), it was clearly stated that the rights guaranteed under Article 5 of the Convention belonged to the category of non-transferable rights. Similarly in the case of *Georgia Makri and others* (*Georgia Makri and others v. Greece* (dec.), no. 5977/03, 24 March 2005), the Court also held that relatives of a deceased person could not be considered as victims for complaints concerning the length of proceedings (Article 6) and lack of effective remedies (Article 13). Similar decisions had also been given in the past by the Commission (namely *Kofler v. Italy*, no. 8261/78, Commission decision of 9 October 1982, DR 30, p. 5 and *Nölkenbockhoff and Bergmann v. the Federal Republic of Germany*, no. 10300/89, Commission decision of 12 December 1984, DR 40, p. 9).

23. In the instant case, İhsan Biç was placed in detention on remand on suspicion of his membership to an illegal organisation and subsequently criminal proceedings were initiated against him before the State Security Court. The criminal proceedings before the Diyarbakır State Security Court are therefore closely linked to his person. There is no evidence in the file to conclude that the applicants were affected by his detention or by the length of the criminal proceedings. The Court further considers that there exists no general interest in the present case which necessitates proceeding with the consideration of these complaints.

24. As a result, the Court concludes that the applicants in the instant case do not have the requisite standing under Article 34 of the Convention and that the case must be rejected as being incompatible *ratione personae* with the provisions of the Convention in accordance with Article 35 §§ 3 and 4.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Declares unanimously inadmissible the remainder of the application.

Done in English, and notified in writing on 2 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President