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

FOURTH SECTION

CASE OF ERÇIKDI AND OTHERS v. TURKEY

(Application no. 52782/99)

JUDGMENT

STRASBOURG

11 April 2006

FINAL

11/07/2006

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 Erçıkdı and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 21 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 52782/99) 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 five Turkish nationals, Mr Mustafa Erçıkdı, Ms Gülşen Çamoğlu, Mr Ali Kazan, Mr Bülent Çamoğlu and Mr Mehmet Kaya ("the applicants"), on 30 July 1999.

2. The applicants were represented by Mr K.T. Sürek and Mr S. Mutlu, lawyers practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 31 March 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicants' 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. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1959, 1965, 1972, 1959 and 1972 respectively and live in Aydın.

6. The applicants were the Nazilli district directors of the Labour Party (*Emeğin Partisi*) at the time of the events.

7. On 31 July 1997 the Izmir Magistrates' Court ordered the confiscation of a leaflet entitled "The Kurdish problem is a problem of the people of Turkey". On 1 September 1997 this leaflet was distributed by the Nazilli District Headquarters of the Labour Party.

8. On 1 October 1997 the public prosecutor at the Izmir State Security Court filed a bill of indictment accusing the applicants of provoking hatred and hostility on the basis of a distinction between race and region. He requested that they be convicted and sentenced under Article 312 §§ 2 and 3 of the Criminal Code.

9. On 17 March 1998 the Izmir State Security Court convicted the applicants as charged. Mr Çamoğlu was sentenced to one year nine months and sixteen days' imprisonment and to a fine of 1,576,566 Turkish liras (TRL). The other applicants were sentenced to one year and eight months' imprisonment and to a fine of TRL 1,433,333. The sentences of Ms Çamoğlu and Mr Kazan were suspended as they did not have a criminal record.

10. On 6 April 1999 the Court of Cassation upheld the judgment of the first-instance court.

II. THE RELEVANT DOMESTIC LAW

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

12. By Law no. 5190 of 16 June 2004, published in the Official journal on 30 June 2004, the State Security Courts have been abolished.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. The applicants complained that they had been denied a fair hearing by an independent and impartial tribunal on account of the presence of a military judge on the bench of the Izmir State Security Court which tried and convicted them. They further complain that the written opinion of the principal public prosecutor at the Court of Cassation was never served on them, thus depriving them of the opportunity to put forward their counter-arguments. They 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

14. The Government argued under Article 35 of the Convention that the applicants' complaints in respect of the independence and impartiality of the Izmir State Security Court must be rejected for non-exhaustion of domestic remedies and for failure to comply with the six-month rule. In this regard, they maintained that the applicants had not invoked this complaint before the domestic courts. They further argued that the applicants should have lodged their application with the Court within six months of the date on which the State Security Court rendered its judgment.

15. The Court reiterates that it has already examined and rejected the Government's similar preliminary objections (see *Vural v. Turkey*, no. 56007/00, § 22, 21 December 2004, *Çolak v. Turkey (no. 1)*, no. 52898/99, §§ 24-27, 15 July 2004, and *Özdemir v. Turkey*, no. 59659/00, § 26, 6 February 2003). The Court finds no particular circumstances, in the instant case, which would require it to depart from its findings in the above-mentioned cases. In view of the above, the Court rejects the Government's preliminary objections under this head.

16. 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 applicants' complaints raise 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 this part 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

17. 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*, cited above, §§ 35-36).

18. As to the instant case, the Court considers that the Government have not submitted any facts or arguments capable of leading to a different conclusion. It considers it understandable that the applicants – 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 they 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 applicants' doubts about that court's independence and impartiality may be regarded as objectively justified (see *İncal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1568, § 72, *in fine*).

19. In conclusion, the Court considers that the State Security Court which tried and convicted the applicants 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

20. Having regard to its finding of a violation of applicants' 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 the domestic courts (see, among other authorities, *İncal,* cited above, § 74 and *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. Mr Erçıkdı, Mr Çamoğlu and Mr Kaya claimed, in total, 46,000 euros (EUR) in respect of pecuniary damage. The applicants claimed, in total, EUR 25,000 in respect of non-pecuniary damage.

23. The Government did not comment on the applicants' claims.

24. As regards the alleged pecuniary damage sustained by Mr Erçıkdı, Mr Çamoğlu and Mr Kaya, the Court notes that they failed to produce any receipt or documents in support of their claim. The Court accordingly dismisses it.

25. The Court 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 *İncal*, cited above, p. 1575, § 82 and *Çıraklar*, cited above, § 45).

B. Costs and expenses

26. The applicants also claimed EUR 3,000 for the costs and expenses incurred before the Court. They did not submit any receipt or documents in support of their claim.

27. The Government did not express an opinion.

28. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

29. 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 Izmir State Security Court;

3. *Holds* that it is not necessary to consider the applicants' other complaint under Article 6 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

5. *Holds*
(a) that the respondent State is to pay the applicants, 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, to be converted into New Turkish liras at the rate applicable at the day of settlement, plus any tax that may be chargeable;
(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 11 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President