



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

THIRD SECTION

CASE OF YILMAZ AND BARIM v. TURKEY

(Application no. 47874/99)

JUDGMENT

STRASBOURG

22 June 2006

FINAL

22/09/2006

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 Yılmaz and Barım 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. TÜRMEK,

Mr C. BÎRSAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 47874/99) 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 two Turkish nationals, Mr Bilgin Yılmaz and Mr Burhan Barım ("the applicants"), on 23 March 1999.

2. The applicants were represented by Ms İ.G. Kireçkaya, a lawyer practising in İzmir. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 26 May 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1972 and 1968 respectively. They were serving their prison sentences at Bergama prison at the time of the application.

5. The applicants were arrested and taken into police custody by police officers at the Anti-terror branch of the İzmir Security Directorate on 7 and 9 September 1996 respectively.

6. On 19 September 1996 the İzmir State Security Court ordered the applicants' remand in custody.

7. On 22 October 1996 the public prosecutor at the İzmir State Security Court filed a bill of indictment with that court and accused the applicants and fifteen other suspects of membership in an illegal organisation, namely the TIKB (Turkish Revolutionary Communist Union - Türkiye İhtilalci Komünistler Birliği). He requested that the applicants be convicted and sentenced under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713.

8. On 24 December 1997 the İzmir State Security Court convicted the applicants as charged and sentenced them to twelve years and six months' imprisonment.

9. On 24 November 1998 the Court of Cassation held a hearing and upheld the judgment of the first-instance court.

II. THE RELEVANT DOMESTIC LAW

10. 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).

11. 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

12. 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 İzmir State Security Court which tried and convicted them. They maintained that the domestic court relied on statements given by them under duress in police custody and failed to take into account their arguments presented during the criminal proceedings. They further complained 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

13. 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 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 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

14. 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).

15. 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 *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1568, § 72 *in fine*).

16. 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*

17. 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 *Işık v. Turkey*, no. 50102/99, §§ 38-39, 5 July 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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.”

19. 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 any relevant supporting documents within the time-limit fixed for the submission of the applicants' observations on the merits and that failure to comply with these requirements may result in the Chamber's rejection of the claim in whole or in part.

20. In the instant case, on 6 December 2005, the applicants were requested to submit their claims for just satisfaction. They did not submit any such claims within the specified time-limit.

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

22. 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, *in fine*, 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 İzmir State Security Court;

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

Done in English, and notified in writing on 22 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President