



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

THIRD SECTION

CASE OF AKINTI AND OTHERS v. TURKEY

(Application no. 59645/00)

JUDGMENT

This version was rectified on 18 September 2007
under Rule 81 of the Rules of Court

STRASBOURG

15 February 2007

FINAL

15/05/2007

In the case of Akıntı 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. TÜRMEŖ,

Mr C. BİRSAN,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 59645/00) 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 nine Turkish nationals, Mr Abdulaziz¹ Akıntı, Mr Kemal Yağış, Mr Mahmut Düzgün, Mr Adnan Kaya, Mr Mecit Aygün, Mr Hüseyin Yüce, Mr İmrah² Akyaz, Mrs Suna Bayrak³ and Mr Abdullah Bağrıyanık (“the applicants”), on 6 June 2000.

2. The applicants were represented by Mrs F. Karakaş Doğan, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 6 February 2003 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the applicants' right to a fair trial 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.

¹ Rectified on 18 September 2007: The applicant's first name read “Abülaziz” in the former version of the judgment.

² Rectified on 18 September 2007: The applicant's first name read “İmran” in the former version of the judgment.

³ Rectified on 18 September 2007: The applicant's name read “Albayrak” in the former version of the judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants (see paragraph 1 above) were born in 1961, 1953, 1954, 1962, 1960, 1967, 1956, 1971 and 1965 respectively and live in Istanbul. Mecit Aygün was the chairman and the other applicants were the members of district administrative board of the Peoples' Democracy Party (*Halkın Demokrasi Partisi*, hereinafter "HADEP") in Gaziosmanpaşa, a district of Istanbul.

5. On 3 February 1998 police officers from the anti-terror branch of the Istanbul Security Directorate conducted a search at the Gaziosmanpaşa district office of the HADEP, where they found illegal publications.

6. Subsequently, the public prosecutor at the Istanbul State Security Court initiated an investigation against the applicants.

7. On 25 March 1998 the public prosecutor filed a bill of indictment charging the applicants with aiding and abetting the PKK under Article 169 of the Criminal Code and Article 5 of Law no. 3713 alleging that the publications found in the HADEP district office contained articles supporting the activities of the PKK. He further issued a decision of non-jurisdiction in respect of the charge concerning possession of illegal publications and referred the case to the Istanbul public prosecutor's office.

8. At the hearing of 6 November 1998 the public prosecutor's submissions on the merits of the case were read out. The submissions of the public prosecutor were not served on the applicants.

9. On the same day, the Istanbul State Security Court convicted the applicants as charged and sentenced them to three years and nine months' imprisonment.

10. On 10 November 1998 the applicants appealed against the judgment of 6 November 1998.

11. On 18 October 1999 the public prosecutor at the Court of Cassation submitted his opinion on the merits of the applicants' appeal to the Court of Cassation. This opinion was not served on the applicants or their representative.

12. On 6 March 2000 the Court of Cassation upheld the first-instance court's judgment.

13. On 23 March 2000 the applicants applied to the public prosecutor's office at the Court of Cassation requesting this office to bring the case before the Court of Cassation for rectification of decision. On 25 April 2000 their request was dismissed.

14. Subsequent to their convictions, on an unspecified date, the applicants were detained.

15. On 21 December 2000 Law No. 4616 on Conditional Release, Deferral of Procedure and Punishments was promulgated

16. On different dates in February 2001, the Istanbul State Security Court ordered the applicants' conditional release pursuant to Law no. 4616.

17. Meanwhile, on 5 July 2000 the Istanbul Magistrates' Court acquitted the applicants of the charge concerning possession of illegal publications.

II. THE RELEVANT DOMESTIC LAW

18. 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), *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003) and *Göç v. Turkey* ([GC], no. 36590/97, § 34, ECHR 2002-V).

19. 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

A. Admissibility

20. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

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

21. The applicants complained under Article 6 § 1 of the Convention that they had been denied a fair hearing on account of a military judge on the bench of the Istanbul State Security Court which had tried and convicted them.

The relevant parts of Article 6 provide as follows:

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

22. The Government submitted that there was no basis to find that the applicants could have any legitimate doubts about the independence of the Istanbul State Security Court. The Government further referred to the constitutional amendment of 18 June 1999 whereby military judges could no longer sit on such courts.

23. The Court notes that it has examined similar cases in the past and has concluded that there was a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34; *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003; and *Han v. Turkey*, no. 50997/99, §§ 23-24, 13 September 2005).

24. 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 aiding and abetting 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 Istanbul 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' fear 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 of Judgments and Decisions* 1998-IV, § 72).

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

2. As regards the other complaints submitted under Article 6 of the Convention

26. The applicants maintained under Article 6 § 1 of the Convention that the search in the HADEP Gaziosmanpaşa office had not been conducted in accordance with law and since their conviction by the State Security Court had been based on the evidence found there, they did not have a fair trial. The applicants complained under Article 6 § 3 (b) of the Convention that the submissions of the public prosecutor at the State Security Court on the merits of the case and the written opinion of the public prosecutor at the Court of Cassation had been never served on them, thus depriving them of the opportunity to put forward their counter-arguments.

27. Having regard to its above 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 applicants' remaining complaints under Article 6 of the Convention (see, among many others, *Incal*, cited above, § 74; and *Gümüş and Others v. Turkey*, no. 40303/98, § 24, 15 March 2005).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed a total of 36,000 euros (EUR) for pecuniary and non-pecuniary damage.

30. The Government contested the applicants' claims.

31. Regarding the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of the proceedings before the State Security Court might have been had the violation of the Convention not occurred (see *Tezcan Uzunhasanoğlu v. Turkey*, no. 35070/97, § 27, 20 April 2004). Moreover, the applicants' claim in respect of pecuniary damage has not been substantiated by any evidence whatsoever. It therefore makes no award under this head.

32. With regard to non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants (see *İncal*, cited above, § 82).

B. Costs and expenses

33. The applicants also claimed EUR 27,000 for the costs and expenses incurred before the Court.

34. The Government submitted that the claims were excessive and unsubstantiated.

35. 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 (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). 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 applicants, jointly, the global sum of EUR 1,000 under this head.

C. Default interest

36. 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 concerning the independence and impartiality of the Istanbul State Security Court;
3. *Holds* that it is not necessary to consider the applicants' other complaints under Article 6 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicants;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, 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 plus any tax that may be chargeable to be converted into new Turkish liras at the rate applicable at the date of the settlement;
 - (b) that from the expiry of the abovementioned 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 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President