



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

SECOND SECTION

CASE OF PİROĞLU AND KARAKAYA v. TURKEY

(Applications nos. 36370/02 and 37581/02)

JUDGMENT

STRASBOURG

18 March 2008

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 Piroğlu and Karakaya v. Turkey,

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

Françoise Tulkens, President,

Ireneu Cabral Barreto,

Rıza Türmen,

Vladimiro Zagrebelsky,

Antonella Mularoni,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 27 November 2007 and 26 February 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 36370/02 and 37581/02) 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 Ecevit Piroğlu and Mrs Mihriban Karakaya (“the applicants”), on 17 August 2002 and 18 August 2002 respectively.

2. The applicants were represented by Ms E. Yıldız and Mr Zeynel Kaya respectively, lawyers practising in Izmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 2 May 2006 the Court joined the applications (Rule 42 § 1), declared them partly inadmissible and decided to communicate to the Government the complaints concerning both applicants' right to a fair and public hearing, and the second applicant's right to freedom of expression and freedom of association. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1974 and 1962, respectively, and live in Izmir. They were members of the executive board of the Izmir Branch of the Human Rights Association (“the Association”) at the time of lodging their applications to the Court. There were two different sets of criminal proceedings brought against the applicants; however, it should be noted that the first applicant's case concerned only the first set of proceedings, regarding the Association members with prior convictions.

A. Proceedings regarding the Association members with prior convictions

5. On 10 July 2001 the Izmir Governor sent a letter to the Association requesting that the membership of thirteen persons, including the second applicant, be annulled as they were considered to be involved in illegal activities. In this letter it is said that, although the second applicant had been taken into police custody on 30 April 1999, she had subsequently been released as it had not been established that she had any connection with the illegal TKP/ML-TIKKO (the Turkish Communist Party / Marxist-Leninist–Turkish Workers' and Peasants' Liberation Army).

6. On 6 August 2001 the Association replied to the Governor that they would not comply with the request since none of these thirteen persons had prior convictions which would ban them from founding or becoming a member of an association, as provided by section 4 §§ 2 and 3 and section 16 of the Associations Act (Law no. 2908).

7. On 17 October and 31 October 2001 respectively, the Izmir Public Prosecutor informed the applicants that a prosecution had been initiated against them for non-compliance with section 4 of Law no. 2908, but that no court proceedings would be initiated if they paid a fine of 142,366,000 Turkish liras (TRL)¹ per person within ten days. The applicants did not pay the fine within ten days as required by the payment order.

8. Subsequently, on 3 December 2001 the Izmir Public Prosecutor filed a bill of indictment against the applicants and the other members of the Board. The public prosecutor requested that the accused be fined under Section 75 of the Associations Act and Article 119 of the Criminal Code for their failure to comply with the Izmir Governor's request. The bill of indictment was not notified to the applicants.

1. Approximately equivalent to 100 euros (EUR) at the time.

9. On 26 December 2001 the Izmir Magistrates' Court, without holding a hearing, found the applicants and the other co-accused guilty as charged and, by a penal order (*ceza kararnamesi*), fined them TRL 213,548,400¹ per person. In doing so, the court relied on the “simplified procedure” stipulated in Article 386 of the Code of Criminal Procedure for relatively minor offences.

10. The applicants and the other co-accused lodged an objection with the Izmir Criminal Court against the decision of 26 December 2001.

11. On 6 February 2002 the Izmir Criminal Court dismissed the objection without a hearing.

12. The applicants paid the amounts due.

13. Subsequently, on 16 December 2002 one of the co-accused, Mr N.B., applied to the Ministry of Justice, requesting the Minister to refer the case to the Court of Cassation by way of a written order (*yazılı emir*).

14. On 29 January 2003 the Minister of Justice issued a written order and instructed the Chief Public Prosecutor at the Court of Cassation to ask the Court of Cassation to set aside the judgment concerned.

15. On 14 April 2003 the Court of Cassation quashed the judgment of the Izmir Criminal Court dated 6 February 2002 and the case file was remitted to the Izmir Magistrates' Court.

16. On 14 May 2003 the Izmir Magistrates' Court held a preparatory hearing and included the case in its list. It further decided to summon all of the defendants, including the applicants, to its next hearing.

17. On 14 July, 7 August and 22 October 2003 respectively, the court held three hearings.

18. At its last hearing, held on 22 October 2003, the Magistrates' Court held that it lacked jurisdiction to hear the case because, following the promulgation of Law no. 4854 on 24 April 2003, the sentence imposed on the applicants for not complying with the Izmir Governorship's order had been classified as an administrative fine. During the proceedings, none of the defendants made submissions to the court.

19. On 25 February 2004 the Court of Cassation upheld the decision of the Izmir Magistrates' Court. The case file was sent to the Governorship of Izmir.

2. Proceedings regarding the Platform of Conscientious Objectors to War

20. On 9 October 2001 the Association, together with several local non-governmental organisations (NGOs), took part in a civil society movement called the “Platform of Conscientious Objectors to War” and made a

1. Approximately equivalent to EUR 167 at the time.

collective press declaration in protest against the military operations of the United States of America (USA) in Afghanistan.

21. On an unspecified date, the prosecutor notified the second applicant that a prosecution had been initiated against her under Section 34 of the Associations Act for her involvement with the “Platform of Conscientious Objectors to War”, an organisation without any lawful status. The prosecutor also informed the applicant that no court proceedings would be initiated if she paid a fine of TRL 142,366,000 within ten days.

22. In the absence of payment, the prosecutor filed an indictment on 3 December 2001, charging the second applicant and five other board members of the Association with a violation of Section 34 of the Act. In the indictment, the prosecutor stated that the platform had no legal basis under Turkish law. The bill of indictment was not served on the second applicant.

23. On 31 December 2001 the Izmir Magistrates' Court, following the simplified procedure and thus without a hearing, convicted the second applicant as charged (case no. 2001/2160). By issuing a penal order, it sentenced her to an increased fine of TRL 213,548,400. However, the court suspended the sentence pursuant to section 6 of Law no. 647 on the execution of sentences.

24. On 18 February 2002 the second applicant lodged an objection with the İzmir Criminal Court against the penal order. She argued that her conviction infringed her right to freedom of expression and that “a collective press declaration” could not be classified as a contribution to the establishment of an unlawful organisation. She further complained that the indictment had not been communicated to her and that the court had not obtained statements or heard counter-evidence from her.

25. On 20 February 2002 the criminal court dismissed her objection, again without holding a hearing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The relevant Articles of the Code of Criminal Procedure which was in force at the time of the events read as follows:

Article 302

“Unless otherwise specifically provided by law, objection proceedings are conducted without a hearing. If necessary, the public prosecutor [may be] heard.”

Article 386

“As regards infringements falling within its jurisdiction, the ... magistrates' court makes its ruling, without holding a hearing, through a penal order. The order can only be given in cases of simple or aggravated fines or in relation to offences carrying a maximum prison sentence of three months ...”

Article 387

“The judge schedules a hearing if he sees an inconvenience in ruling in the absence of one.”

Article 390

“A hearing shall be held if an objection is raised to a prison sentence imposed by a penal order. (...)

The suspect can be represented by defence counsel during the hearing. (...)

Objections to penal orders (...) are examined by a judge at the criminal court of first instance, in line with the procedure described under Articles 301, 302 and 303. The objection would suspend the execution of the penal order.”

27. In a judgment given on 30 June 2004, the Constitutional Court declared Article 390 § 3 of the Code of Criminal Procedure unconstitutional and a nullity. It held that the lack of a public hearing before the Criminal Court of First Instance which examines objections to penal orders would be a deprivation of the right guaranteed by Article 6 of the Convention, as well as Article 36 of the Constitution.

28. Article 343 § 1 of the Code of Criminal Procedure, concerning references to the Court of Cassation by written order of the Minister of Justice (*Yazılı emir ile bozma* – “the reference by written order”) provides:

“Where the Minister of Justice has been informed that a judge or court has delivered a judgment that has become final without coming under the scrutiny of the Court of Cassation, he may issue a formal order to the Chief Public Prosecutor requiring him to ask the Court of Cassation to set aside the judgment concerned ...”

29. The relevant provisions of the Associations Act (Law no. 2908), which was in force at the time provided as follows:

Section 4

“Everyone over the age of eighteen and qualified to exercise civil rights has the right to establish an association without prior notice.

However, the following persons, even if they have benefited from an amnesty, may not found an association:

...

2. a) Persons convicted of any of the following offences: shameful offences such as embezzlement, dishonesty, bribery, theft, fraud, forgery, abuse of religious belief, fraudulent bankruptcy, offences of smuggling other than for manufacturing, supply or consumption, [or] improper interference in official competitive tender procedures, procurements and sales.

b) Any person convicted of those offences appearing in the first chapter of Book Two of the Turkish Penal Code, or of open incitement to commit such offences.

c) Any person convicted of incitement to enmity and hatred on grounds of differences of class, race, language, religion or region under paragraph two of Article 312 of the Turkish Penal Code, or of counterfeiting under Articles 316, 317 or 318 of the same code.

d) Any person convicted of committing, for political and ideological purposes, those actions mentioned in the first, second or third paragraphs of Article 536 of the Turkish Penal Code, or those in the first, second, third, fourth or fifth paragraphs of Article 537 of the same Code ...”

Section 16

“Everyone over the age of eighteen and qualified to exercise civil rights has the right to become a member of an association. However, those indicated in the second paragraph of section 4 of this Law may not be members of associations.”

Section 34

“Associations may not form organisations other than federations or confederations.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

30. The applicants complained under Article 6 § 1 of the Convention that they had been deprived of their right to a fair and public hearing in the determination of the criminal charges against them. They stressed the fact that the courts had determined their case without holding a hearing. The applicants further alleged a breach of Article 6 § 3 (a) of the Convention in that they had not been informed promptly of the accusations against them as the public prosecutor's indictment had not been communicated to them. They also maintained that they had been deprived of their rights to defend themselves in person or through a lawyer, and to submit counter-arguments and evidence, including the examination of witnesses, within the meaning of Article 6 § 3 (b), (c) and (d).

31. Article 6, in so far as relevant reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...;

3. Everyone charged with a criminal offence has the following minimum rights:

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

A. Admissibility

32. The Government argued that the second applicant had failed to exhaust domestic remedies in respect of the second set of criminal proceedings. In this connection, they stated that at the end of the first set of criminal proceedings, at the request of one of the co-accused, the Ministry of Justice had issued a written order and referred the case to the Court of Cassation. As the second applicant did not follow the same procedure for the second set of proceedings, in the Government's view she could not be considered to have exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention.

33. The Court notes that the remedy referred to by the Government is an extraordinary remedy under Turkish law. According to Article 343 of the Code of Criminal Procedure (see paragraph 28 above), the Chief Public Prosecutor at the Court of Cassation is empowered to refer a case to the Court of Cassation, but he may do so only on the formal instructions of the Minister of Justice. The remedy in question is therefore not directly accessible to people whose cases have been tried. Consequently, regard being had to the generally recognised rules of international law, it is not necessary to attempt this remedy in order to comply with the requirements of Article 35 § 1 of the Convention (see *Öztiirk v. Turkey* [GC], no. 22479/93, § 45, ECHR 1999-VI). Accordingly, the Court dismisses the Government's preliminary objection.

34. The Court notes that this part of 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. General principles

35. The Court reiterates that it is a fundamental principle enshrined in Article 6 § 1 that court hearings should be held in public. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in

the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the principles of any democratic society (see, among other authorities, *Stefanelli v. San Marino*, no.35396/97, § 19, ECHR 2000-II).

36. Read as a whole, Article 6 guarantees the right of an accused to participate effectively in a criminal trial. In general, this includes not only the right to be present, but also the right to receive legal assistance if necessary, and to follow the proceedings effectively. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c) and (e) of Article 6 § 3 (see, among other authorities, *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, pp. 10–11, § 26).

37. Furthermore, Article 6 § 1 does not guarantee a right of appeal against a decision of first instance. Where, however, domestic law provides for a right of appeal, the appeal proceedings will be treated as an extension of the trial process and accordingly will be subject to Article 6 (see *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, § 25).

2. Application in the present case

38. The Court considers that, in the instant case, it is more appropriate to deal with the applicants' complaints under Article 6 § 1 globally due to the overlapping nature of the issues and since the sub-paragraphs of Article 6 § 3 may be regarded as specific aspects of the general fairness guarantee of the first paragraph.

39. At the outset, the Court notes that, in a judgment delivered on 30 June 2004, the Constitutional Court unanimously declared Article 390 § 3 of the former Criminal Code unconstitutional and a nullity, holding that depriving individuals of a public hearing was an infringement of the right to a fair trial. Furthermore, with the new Criminal Code and the Code of Criminal Procedure, which came into force on 1 June 2005, the practice of issuing penal orders ceased to exist.

40. However, the Court observes that, in accordance with the relevant domestic law prevailing at the time of the events, no public hearing was held during the applicants' prosecution. Both the Izmir Magistrates' Court, which issued the penal orders and fined the applicants, and the Izmir Criminal Court, which examined their objections, took their decisions on the basis of the documents in the case files. The applicants were not given the opportunity to defend themselves in person or through a lawyer before the courts which determined their cases. The Court, therefore, considers that they were not able to participate in the criminal proceedings effectively. As regards the subsequent procedure which started upon the written order issued by the Minister of Justice on 29 January 2003, the Court notes that no defence submissions were taken from the applicants and the other

co-accused during the proceedings, which ended without curing or providing redress for the earlier defects (see, *a contrario*, *Şentuna v. Turkey* (dec.), no. 71988/01, 25 January 2007).

41. In view of the above, the Court concludes that the procedure followed by the judicial authorities prevented the applicants from exercising their defence rights properly and thus rendered the criminal proceedings unfair.

42. Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

43. Relying on Article 10 of the Convention, the second applicant alleged that her right to freedom of expression had been infringed, as she had been convicted of taking part in a movement and participating in a collective press declaration criticising the military actions of the USA in Afghanistan.

44. Article 10 of the Convention, in its relevant part, provides as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime, ...”

A. Admissibility

45. The Court notes that this complaint 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. *Whether there was interference*

46. The Government denied that there had been interference, arguing that the second applicant had not been sentenced for making a press declaration, but for failing to comply with the Associations Act (Law no. 2908) which had been in force at the time. They maintained that,

according to section 34 of that Act, associations could only form federations and confederations.

47. The second applicant contested these arguments and claimed that her conviction constituted an interference with her right to freedom of expression within the meaning of Article 10 of the Convention.

48. The Court notes that this case differs from a number of other cases concerning freedom of expression against Turkey that have come before it. In the instant case, the second applicant was convicted under section 34 of the Associations Act for her participation in the “Platform of Conscientious Objectors to War”, which was a civil society movement initiated by several local NGOs to protest against the military actions of the USA in Afghanistan. As indicated in the public prosecutor's indictment dated 3 December 2001, this “platform” was not a legal person in domestic law.

49. The Court observes that the local NGOs which formed the Platform, including the Izmir Human Rights Association, made a joint press declaration on 9 October 2001 and the applicant, in her capacity as a board member of the Association, was convicted on 31 December 2001 on the basis of section 34 of the Associations Act. The Court considers that the second applicant's conviction and sentence for being part of a movement whose aim was to draw attention to a topical issue at the time constituted an interference with her freedom of expression. Thus, in order to be compatible with Article 10, that interference must satisfy three conditions: it must be “prescribed by law”, pursue one or more legitimate aims under the second paragraph of the provision and be “necessary in a democratic society” to achieve those aims.

2. Was the interference “prescribed by law”?

50. The Government considered that the interference was prescribed by section 34 of the Associations Act, which prevented associations from forming or being part of a legal entity other than a federation or confederation.

51. The Court reiterates that the expression “in accordance with the law” not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). It notes that the scope of the notion of foreseeability depends to a considerable degree on the content of the impugned text, the field it is designed to cover and the number and status of those to whom it is addressed (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 65, 17 February 2004).

52. In the instant case, the Court is called upon to examine whether, in the light of the particular circumstances of the case, section 34 of the Associations Act relied on by the Government had the requisite quality of law, i.e. whether it was sufficiently accessible and foreseeable.

53. As regards accessibility, the Court notes that the provision satisfied this condition, as the Associations Act had been published in the Official Gazette of 7 October 1983.

54. On the issue of foreseeability, the Court observes that the wording of section 34 stipulated that associations could only form federations and confederations. However, in the Court's view, this wording was not sufficiently clear to enable the members of the applicant's Association to have realised that rallying to a movement or "platform" would lead to criminal sanctions being imposed on them. The Court finds it difficult to see how supporting such a movement could be deemed to amount to the formation of an organisation within the meaning of Section 34. It considers that the domestic courts thus extended the scope of section 34 beyond that which could have been reasonably foreseen in the circumstances of the case (cf. *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 42, ECHR 2005-I).

55. As a result, in sentencing the second applicant to a fine, and notwithstanding the fact that this sentence was subsequently suspended, the domestic courts failed to observe the condition of foreseeability. Accordingly, the interference with the applicant's freedom of expression was not prescribed by law. That being so, the Court is not required to determine whether this interference pursued a legitimate aim or whether it was proportionate to the aim pursued.

56. The Court concludes, therefore, that there has been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

57. The second applicant also relied on Article 11 of the Convention, complaining that she had been convicted, pursuant to Sections 4 and 50 of the Associations Act, for not annulling the membership of thirteen persons, including her own, of the Human Rights Association.

58. The Government denied the allegation, stating that the second applicant had been sentenced to a fine because of a failure to comply with a procedural obligation under Section 4 of the Act. She had not been convicted on account of the aims, political stance or activities of the Association.

59. Article 11 of the Convention, in its relevant part, provides as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime ..."

A. Admissibility

60. The Court notes that this complaint 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. Whether there was interference

61. The Government maintained that there had been no interference with the second applicant's rights under Article 11 of the Convention.

62. The Court considers that the second applicant's conviction on the membership question constituted, in itself, an interference with her rights under Article 11.

2. Was the interference “prescribed by law”?

63. The Government contended that the second applicant's conviction was prescribed by law, namely the Associations Act, and that it had pursued the legitimate aim of preventing disorder.

64. The second applicant maintained that the interference in question was not prescribed by law, as at the material time the law stipulated that only those who had been convicted of certain offences were not entitled to be members of an association. However, she had had no prior conviction which would have required the annulment of her membership.

65. As to the requirement of legality, according to the Court's case-law, which is also mentioned above (paragraph 51), the expression “in accordance with the law” refers to the quality of the legislation in question. Domestic law must afford a measure of protection against arbitrary interference by public authorities with Convention rights, in respect of which the rule of law, one of the basic principles of a democratic society, would not condone unfettered powers being conferred on the executive. Consequently, the law must indicate with sufficient clarity the scope of any executive discretion and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). It must furthermore provide adequate and effective safeguards against abuse, which may in certain cases include procedures for effective scrutiny by the courts (see, *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, no. 14134/02, § 46, 11 October 2007).

66. Turning to the present case, the Court notes at the outset that the interference with the second applicant's freedom of association stemmed from Sections 4 and 16 of the Associations Act, which provided that those

who had been convicted of certain offences were not entitled to become members of an association. The Court observes that the second applicant contended that there had been no reason to terminate the membership of the thirteen people, including her own. She maintained that, although she had been taken into custody in 1999, she had been released and no criminal proceedings had been brought against her at that time. The Court is persuaded by the applicant's claim in the light of the Izmir Governor's letter of 10 July 2001 (paragraph 5 above). Consequently, the Government have not demonstrated why the public authorities could otherwise have legitimately required the annulment of the applicant's membership.

67. This element leads the Court to conclude that the second applicant was deprived of proper legal protection against arbitrary interference with her freedom of association, as there was a failure to meet the requirements of lawfulness. That being so, the Court is again not required to determine whether this interference pursued a legitimate aim or whether it was proportionate to the aim pursued.

68. There has therefore been a violation of Article 11 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. Both applicants requested compensation for the pecuniary damage resulting from their obligation to pay a fine. Furthermore, they requested EUR 1,000 and EUR 1,750, respectively, for non-pecuniary damage.

71. The Government contested these claims.

72. As regards pecuniary damage, the Court notes that it cannot speculate as to what the outcome of proceedings compatible with Article 6 of the Convention would have been. Accordingly, it makes no award under this head (see *Karahanoğlu v. Turkey*, no. 74341/01, § 43, 3 October 2006).

73. Moreover, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the first applicant.

74. As regards the second applicant, in view of the violations found under Articles 10 and 11 of the Convention, and ruling on an equitable basis, the Court awards EUR 1,000 for her non-pecuniary damage.

B. Costs and expenses

75. The applicants claimed 2,750 new Turkish liras (YTL) and YTL 5,400 respectively for the costs and expenses incurred before the Court. In respect of their claims, they referred to the Izmir Bar Association's Scale of Fees.

76. The Government contested the claims.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicants have not substantiated that they have actually incurred the costs so claimed. Accordingly, it makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the applications admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of both applicants;
3. *Holds* that there has been a violation of Article 10 of the Convention in respect of the second applicant;
4. *Holds* that there has been a violation of Article 11 of the Convention in respect of the second applicant;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the first applicant;
6. *Holds*
 - (a) that the respondent State is to pay the second applicant, 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 non-pecuniary damage, to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President