



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

SECOND SECTION

CASE OF EK AND ŞIKTAŞ v. TURKEY

(Applications nos. 6058/02 and 18074/03)

JUDGMENT

STRASBOURG

17 February 2009

FINAL

17/05/2009

This judgment may be subject to editorial revision.

In the case of Ek and Şıktaş v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 6058/02 and 18074/03) 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 Mehmet Şirin Ek and Mr Hüseyin Şıktaş (“the applicants”), on 16 November 2001 and 14 May 2003 respectively.

2. The applicants were represented by Mr O.K. Cengiz and Ms M. Kırdök respectively, lawyers practising in Izmir and Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 4 January 2006 and 3 October 2006 respectively, the Court decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

4. The applicants were born in 1975 and 1978 respectively. The facts common to these cases are that the applicants were arrested and placed in custody in different times and places. During their custody period, they were interrogated by the police, the public prosecutor and the investigating judge respectively, in the absence of a lawyer. These statements were subsequently used for their convictions by the trial court.

5. The details concerning the applications are indicated in the table below.

Application no. and case name	Dates of police custody	Date of interrogation by the police	Date of interrogation by the public prosecutor and the investigating judge	Date of final decision by the Court of Cassation
6058/02 Ek v. Turkey	29/2/2000 to 5/3/2000	4/3/2000	5/3/2000	16/5/2001
18074/03 Şıktaş v. Turkey	25/1/1996 to 31/1/1996	27/1/1996	30/1/1996 31/1/1996	23/12/2002

THE LAW

6. In view of the similarity of the applications, the Court finds it appropriate to join them.

7. Relying on Article 6 § 3 (c) of the Convention, the applicants complained in the first place that they had been denied the assistance of a lawyer during their police custody, and that their statements which had been taken during this period, allegedly under duress, had been used for their conviction. They further stated under Article 6 § 3 (d) that they had not had an opportunity to question or to confront some of the witnesses. Finally, again relying on Article 6 of the Convention, the second applicant complained that he had not been able to contact members of his family during his police custody.

8. The complaint, which the Court finds of particular importance and which is common to the present applications, is the absence of legal assistance to the applicants during their police custody. It therefore considers it appropriate to limit its examination solely to this matter.

9. As regards application no. 18074/03, the Government stated that this application was introduced outside the six month time-limit, since the first instance court had delivered its judgment on 31 October 2001, whereas the application was introduced on 14 May 2003. The Court recalls that, in assessing whether or not a trial was fair, regard should be had to the entirety of the proceedings (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports of Judgments and Decisions* 1996-I). In the present case, the applicant lodged his application with the Court within six months of the delivery of the final decision in the case given by the Court of Cassation. He therefore lodged his application to the Court within the six month time-limit, as required by Article 35 § 1 of the Convention. Consequently, the Government's objection cannot be upheld.

10. The Court notes that these applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further

notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

11. As regards the merits, the Court observes that it has already examined the same grievance in the case of *Salduz v. Turkey* and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 ([GC], no. 36391/02, §§ 56-62, 27 November 2008). In that judgment, the Court held that, the restriction imposed on the right of access to a lawyer was systematic and applied to anyone held in police custody during that period, regardless of his or her age, in connection with an offence falling within the jurisdiction of the State Security Courts.

12. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Salduz* judgment.

13. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case.

14. As regards just satisfaction under Article 41 of the Convention, the first applicant, Mehmet Şirin Ek, did not make any request. The second applicant, Hüseyin Şıktaş, claimed 15,000 euros (EUR) in respect of non-pecuniary damage. Based on a legal fee agreement, he also requested 8,000 New Turkish liras (TRY) (approximately EUR 3,900) in respect of his lawyer's fees, and TRY 210 (approximately EUR 100) in respect of costs and expenses. The Government contested the claims.

15. In respect of non-pecuniary damage, ruling on an equitable basis, the Court awards EUR 1,500 to the second applicant.

16. The Court further considers that the most appropriate form of redress would be the re-trial of the applicants in accordance with the requirements of Article 6 § 1 of the Convention, should the applicants so request (see, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Salduz*, cited above, § 72).

17. According to its relevant case-law, the Court also considers it reasonable to award the sum of EUR 1,000 to the second applicant in respect of costs and expenses.

18. The Court further finds 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. *Decides* to join the applications;
2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1, on account of the lack of legal assistance to the applicants while in police custody;
4. *Holds* that there is no need to examine the applicants' other complaints under Article 6 of the Convention;
5. *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, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 17 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President