CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 72071/01
by Ahmet Turan DEMİR
against Turkey

The European Court of Human Rights (Third Section), sitting on 24 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Ms R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 16 May 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ahmet Turan Demir, is a Turkish national who was born in 1949 and lives in Ankara. He was represented before the Court by Ms B. Boran and Mr M.N. Özmen, lawyers practising in Ankara.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

At the material time the applicant was the leader of the People's Democratic Party (HADEP). At a party meeting in Ankara in October 1999 he made a speech, which was recorded and scripted by the police officers of the Ankara Security Directorate.

In an indictment dated 8 February 2000 the public prosecutor's office at the Ankara State Security Court, on account of this speech, instituted criminal proceedings against the applicant on the ground of disseminating propaganda against the indivisible unity of the state with its territory and nation, contrary to Section 8 of the Prevention of Terrorism Act (Law No. 3713).

The applicant's speech reads as follows as it is referred in the charges laid by the public prosecutor's office:

> "My dear friends everywhere we go we hear the same messages, slogans, cry outs from the people of that land of peace as we now hear from you. Peace is their cry. Democracy is their cry. Their message is on human rights, equality and democracy. That means, from now on, it is not possible to dismiss our claims and efforts. Furthermore we observe one little difference in these days; new improvements in the human qualities of the Kurdish people from the beginning.
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> Since we said that this regime is not democratic, it is not suitable for human beings. Therefore had to be changed. And since we suffered a lot of ill treatments, difficulties, suppressions because of what we said, we build up these features of us.
>
> The top of the judiciary, the head of the Court of Cassation joins us with a similar tone. For many decades like today we said and wanted the same things. Today we still want it desperately. But is it only the Kurdish who need it? Whoever lives in this country; Kurd, Laz, Cerkes, Arab, etc., our demands are to be essential for everyone. We suffer additionally from these difficulties, because we are Kurdish. But we know that people who are not Kurdish suffer from the same difficulties greatly.
>
> The Kurdish question is now on the verge of a solution. This way or that way it has to be solved. Until recently there have been two groups of people living in peace together without any problem. Czechs and Slovaks lived unified under the State of Czechoslovakia. One day they decided that 'we shall no longer live under one unified State'. Let's be separated from each other. Let's found separate States. They say that we live in peace together as in the past but now as members of two neighbouring states. Without arguing, or fighting, or any problem created between them, they settled their matters, which means they were separated into two states. It was a confederation, which was founded during the Soviet Union period, consisting in many nations. Different peoples, separate national ethnicities were being governed in a unique way under the unification of a state and their internal affairs were restricted.
>
> It has been observed after the collapse of the Soviet Union that many of them also have been separated without problem and suffering. They have founded separate States. No one disputed with that. We think here that these developments are positive.

> So that the question in which we are interested more than others, has to be settled here one way or another, too. My dear brothers we suggest that the problem has to be solved within the same geographical establishment and within the territory of the same state. So we furthermore argue for that the ethnic identity of the Kurdish has to be equalised to the identity of the Turkish, and it has to be guaranteed by the law. The guarantees of their expressing themselves freely in any form have to be maintained. And the obstacles put before the culture should be removed. In other words, they should be able to express themselves as they wish and they should be able to live their lives in accordance with their own identities."

In the proceedings before the Ankara State Security Court the applicant pleaded not guilty and maintained that he had never intended to promote separatism. He argued that he expressed his opinion on the country's important questions as the leader of a political party, which is essential in a democratic society, criticised the existing practice and offered their solution to these problems. He further stated that his speech should be assessed within the scope of freedom of expression.

On 1 June 2000 the Ankara State Security Court found the applicant guilty as charged by the public prosecutor. It ruled that the speech amounted to dissemination of separatist propaganda against the indivisible unity of the Turkish State with its territory and the nation. The applicant's reference to the example of Czechoslovakia in his speech was deemed a recommendation of a possible model for separation between the Kurdish and the Turkish. He was fined the amount of 800,000,000 Turkish liras and sentenced to one-year term of imprisonment.

The applicant appealed against the conviction to the Court of Cassation. On 15 January 2001 the Court of Cassation dismissed this application, upholding the State Security Court's assessment under Section 8 of the Prevention of Terrorism Act.

B. Relevant domestic law

A full description of the relevant domestic law may be found in *Kızılyaprak v. Turkey* (no. 27528/95, § 26, 2 October 2003).

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that his case was not heard by an impartial and independent tribunal.

The applicant alleges under Article 7 of the Convention that the offence he was charged with should not have been criminalised as an offence under domestic law in the first place.

The applicant further complains that his conviction and sentence violated Articles 9 and 10 of the Convention. In conjunction with these complaints he also alleges a violation of Article 14.

THE LAW

1. The applicant contended that his conviction and sentence violated his right under Articles 9 and 10 of the Convention.

The Government maintained that the applicant had failed to exhaust the domestic remedies within the meaning of Article 35 § 1 of the Convention as he did not raise his complaints before the domestic authorities.

The Court notes that the applicant submitted before the domestic court that he expressed his opinion on the country's important questions as the leader of a political party, which is essential in a democratic society, criticised the existing practice and offered their solution to these problems and that his speech should be assessed within the scope of freedom of expression.

The Court therefore concludes that this part of the application cannot be rejected for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention. Accordingly, it rejects the Government's objection.

The Government maintained that the interference with the applicant's right to freedom and expression was compatible with the provisions of the second paragraph of Article 10. It was based on Article 8 of the Prevention of Terrorism Act and the applicant's conviction was necessary in a democratic society in order to maintain the national security and public safety.

The Court finds that in the circumstances of this case the applicant's complaint need only be examined under Article 10 of the Convention.

The Court considers, in the light of the parties' submissions, that the complaint raises complex issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant contended under Article 6 § 1 of the Convention that he was not tried by an independent and impartial tribunal having regard to the fact that the civil judges sitting on the bench of the Ankara State Security Court are attached to the Supreme Council of Judges and Public Prosecutors.

The Government maintained that the State Security Courts were established by law to deal with the offences against the security and

integrity of the State. In the instant case there was no basis for finding that the applicant could have any legitimate doubts about the independence of the Ankara State Security Court.

The Court reiterates that it has already rejected similar complaints concerning the issue of the independence and the impartiality of the civil judges on account of their attachment to the Supreme Council of Judges and Public Prosecutors (see, among many others, *Imrek v. Turkey* (dec.), no. 57175/00, 28 January 2003). The Court finds no particular circumstances in the instance case which would require it to depart from its findings in the above-mentioned case.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

3. The applicant alleged under Article 7 of the Convention that the offence he was charged with should not have been criminalised as an offence under domestic law in the first place.

The Court considers that this complaint does not raise any issues under Article 7.

It follows that this complaint is manifestly-ill founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. The applicant alleged a breach of Article 14 of the Convention, in conjunction with Article 10, that his conviction and sentence for having expressed his opinions amounted to discrimination.

The Government submitted that the interference prescribed by the Prevention of Terrorism Act applies to everyone no matter their ethnic origin.

The Court has examined the applicant's allegation in light of the evidence submitted before it, but considers it unsubstantiated.

It follows that this part of the application is manifestly-ill founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning his right to freedom of expression;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President