CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 47826/99
by Erol DİREKÇİ and Ergül DİREKÇİ
against Turkey

The European Court of Human Rights (Second Section), sitting on 31 March 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 27 April 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Ergül Direkçi and Mr Erol Direkçi, are Turkish nationals who were born in 1950 and 1952 respectively. Ms Ergül Direkçi died on 31 May 2000. They were represented before the Court by Mr L. Kanat, a lawyer practising in Ankara.

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

Mr Erkut Direkçi, who died on 12 December 1997, was the applicants' son.

On 15 October 1995 Erkut Direkçi had participated in a demonstration organised by a trade union in Ankara. On the same day he was taken into custody.

On 27 October 1995 he was brought before the Ankara State Security Court which ordered his detention on remand.

On an unspecified date the Public Prosecutor at the Ankara State Security Court filed a bill of indictment, charging the applicant under Article 168 § 2 of the Criminal Code with membership of an illegal organisation, namely the MLKP (Marxist-Leninist Communist Party).

On 15 August 1996 Erkut Direkçi's lawyer requested his client's release pending trial, as he was suffering from liver problems and *anaemia* following his hunger strike. The Ankara State Security Court dismissed this request. It is to be noted that in his letter of 2 April 1999 to the Court, the applicants' lawyer claimed that Erkut Direkçi had not been on a hunger strike and that neither had he, as a lawyer, mentioned any such event before the State Security Court. He further claimed that the relevant sentence had been included in the hearing minutes by error.

On 10 September 1996 Erkut Direkçi's lawyer submitted a petition to the Ankara State Security Court and asked the court to instruct the Ankara Numune Hospital to draft a medical report concerning his client's state of health.

Between 10 and 16 September 1996 Erkut Direkçi was examined at the Ankara Numune Hospital and diagnosed with hepatocellular carcinoma, i.e. liver cancer. The medical reports submitted by the applicants establish the diagnosis. The applicants also submitted two medical reports recommending one and two months' rest for Erkut Direkçi, respectively.

On 13 September 1996 Ergül Direkçi filed a petition with the Ankara State Security Court, requesting that her son be released pending trial.

On 17 September 1996 Erkut Direkçi's lawyer once again requested the Ankara State Security Court that his client be released pending trial on account of his serious illness.

On the same day the Ankara State Security Court ordered Erkut Direkçi's release pending trial.

On 10 December 1996 Erkut Direkçi lodged a petition with the Ankara State Security Court, where he stated that he had fallen ill due to unsanitary and inhuman prison conditions, that he had been denied medical treatment by the prison authorities for security reasons and that he had not received appropriate treatment in the prison ward of Ankara Numune Hospital. He maintained that he had obtained medical treatment only after his release

pending trial and that he would have to undergo monthly medical examinations for the following two years.

On 4 February 1997 the Ankara State Security Court convicted Erkut Direkçi of membership of the MLKP under Article 168 § 2 of the Criminal Code and sentenced him to 12 years and 6 months' imprisonment. The Court also ordered his detention in his absence.

On 5 February 1997 Erkut Direkçi's lawyer lodged an appeal against the decision regarding his client's detention.

On the same day the Ankara State Security Court dismissed the appeal, taking into account the serious nature of the offence.

On 3 July 1997 Ergül Direkçi lodged a petition with the Court of Cassation, requesting the latter to invalidate the detention order as regards her son and stating that he would not be able to receive proper treatment if he were to be detained. She received no reply to her petition.

In August 1997 Erkut Direkçi left for Germany to receive medical treatment.

On 24 September 1997 his lawyer requested the Court of Cassation to quash the judgment and the detention order of the Ankara State Security Court.

On 6 November 1997 the Court of Cassation upheld the judgment of the Ankara State Security Court.

Erkut Direkçi died in Germany on 12 December 1997.

On 27 August 2004 the applicants' representative informed the Court that the applicant Ergül Direkçi had died on 31 May 2000.

COMPLAINTS

The applicants complained that Erkut Direkçi had fallen ill as a result of poor prison conditions, that he had not received appropriate medical treatment due to the Ankara State Security Court's delayed order to release him pending trial and that their son had not received proper and adequate medical treatment in the prison ward of Ankara Numune Hospital. They alleged that the detention order after conviction had hindered their son's medical treatment. They claimed that Erkut Direkçi had to flee to Germany, which had caused both him and themselves more suffering. They relied on Articles 2 and 3 of the Convention.

The applicants complained under Article 6 § 1 of the Convention that their son had been denied a fair hearing on account of the presence of a military judge on the bench of the Ankara State Security Court, which tried and convicted him. The applicants contended under Article 6 § 3 (b) of the Convention that the opinion of the Chief Public Prosecutor to the Court of

Cassation had never been served on their son or his lawyer, thus depriving him of the opportunity to put forward his counter-arguments.

The applicants complained under Article 11 of the Convention that the conviction of Erkut Direkçi on account of his participation in a demonstration was a violation of his right to freedom of peaceful assembly.

THE LAW

A. As regards the applicant Ergül Direkçi

The Court notes that Ms Ergül Direkçi died on 31 May 2000 and that no request has been submitted by that applicant's heirs to pursue the examination of the case. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application insofar as it was brought by Ms Ergül Direkçi within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of this part of the application by virtue of that Article. It therefore decides to strike the application out of its list of cases insofar as it was brought by Ms Ergül Direkçi.

B. As regards the applicant Erol Direkçi

1. Article 2 of the Convention

The applicant alleged under Article 2 of the Convention that the circumstances surrounding the death of his son, Erkut Direkçi, constituted a breach of his right to life.

The Government first submitted that the applicant's complaint under Article 2 of the Convention should be rejected for non-exhaustion of domestic remedies. In this connection, they contended that the applicant had never complained about his son's death before the domestic authorities. They further submitted that there was no causal link between the illness or death of Erkut Direkçi and his detention on remand.

The Court observes that the applicant's son died on 12 December 1997 and that the application was lodged with the Court on 27 April 1998. The Court further observes that the applicant failed to submit any document to the Court attesting that he had raised his complaint under Article 2 of the Convention before the national authorities between the aforementioned dates. In the absence of such proof, the Court concludes that the applicant

has failed to exhaust domestic remedies with respect to his complaint under Article 2 of the Convention.

It follows that this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Article 3 of the Convention

The applicant complained under Article 3 of the Convention that his son had fallen ill due to prison conditions and that he had not received proper medical treatment while he was detained on remand. He further alleges under the same head that the detention order after conviction hindered his son's medical treatment and caused both him and his son more suffering.

The Government contended in reply that there was no causal link between Erkut Direkçi's illness and his detention on remand. They further submitted that Erkut Direkçi had been medically examined and treated while he was detained on remand. The Government maintained that Erkut Direkçi was released from detention on 17 September 1996, the date on which his lawyer submitted medical reports concerning his illness. They finally submitted that there had been no decision taken by the domestic authorities which would have harmed the physical integrity or psychological state of Erkut Direkçi.

The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Kudla v. Poland* [GC], no. 30210/96, § 90, ECHR 2000-XI). However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudla*, cited above, § 91).

The Court further reiterates that it has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment (see *Kudla*, cited above, §§ 92 and 93). Nevertheless, this provision imposes an

obligation on the States to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX).

Turning to the particular circumstances of the case, the Court notes that although the applicant claimed before the Court that his son fell ill due to the prison conditions, he failed to submit any substantiation of his allegation. In particular, the contents of the medical reports submitted by the applicant do not allow the Court to conclude that Erkut Direkçi's illness was caused by the prison conditions. Furthermore, Erkut Direkçi was examined at Ankara Numune Hospital and diagnosed with liver cancer between 10 and 16 September 1996 and the first-instance court ordered Erkut Direkçi's release pending trial on 17 September 1996, after having received the medical reports concerning his health condition. The Court therefore does not consider that the respondent State failed to fulfil its obligation to protect the physical well-being of Erkut Direkçi.

As regards the applicant's complaint concerning the detention order after Erkut Direkçi's conviction by the Ankara State Security Court, the Court accepts that the presence of the arrest warrant concerning the applicant's son must have caused both him and his son a certain amount of anguish and distress. However, the Court observes that, despite the issue of the arrest warrant in question, Erkut Direkçi was never detained. Moreover, he was able to leave Turkey and go to Germany in order to receive medical treatment, where he died fifteen months after his release from detention. In these circumstances, the Court considers that the anguish and distress suffered by the applicant and Erkut Direkçi cannot be regarded as attaining the proscribed level of severity falling within the scope of Article 3 of the Convention.

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

3. Articles 6 and 11 of the Convention

The applicant alleged under Article 6 § 1 of the Convention that their son had been denied a fair hearing on account of the presence of a military judge on the bench of the court which tried and convicted him. He further maintained under Article 6 § 3 (b) of the Convention that the opinion of the Chief Public Prosecutor to the Court of Cassation had never been served on his son, thus depriving him of the opportunity to put forward his counter-arguments. The applicant also complained under Article 11 of the Convention that the conviction of Erkut Direkçi on account of his participation in a demonstration violated his right to freedom of peaceful assembly.

The Government contended that the applicant could not be considered a victim within the meaning of Article 34 of the Convention. They submitted that the applicant's complaints under Articles 6 and 11 were closely linked with Erkut Direkçi and that the applicant had not been directly affected by the proceedings of which complaint was made.

As regards the substance of the complaints under Articles 6 and 11 of the Convention, the Government maintained that, by Law no. 4388 of 18 June 1999 and Law no. 4390 of 22 June 1999, amendments were made to remove military judges from the benches of the State Security Courts. The Government further contended that by Law no. 5190 of 16 June 2004, the State Security Courts were abolished. They submitted that the Chief Public Prosecutor's opinion is not binding on the Court of Cassation and that, following the referral of the case to the Court of Cassation, it would have been open to any party to the proceedings to obtain from the court's registry any information regarding the state of proceedings contained in the case-file. The Government finally contended that Erkut Direkçi had been convicted on account of his involvement in an illegal organisation and that, therefore, there had not been an interference with his right to freedom of peaceful assembly.

(a) Victim status

The Court decides to join to the merits the question on the "victim" status of the applicant (see *Biç and Others v. Turkey* (dec.), no. 55955/00, 2 December 2004).

(b) Merits

The Court considers, in the light of the parties' submissions, that the complaints under Articles 6 and 11 of the Convention raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases insofar as brought by the applicant Ergül Direkçi;

Decides to join to the merits the Government's objection based on the victim status of the applicant Erol Direkçi in respect of the complaints under Articles 6 and 11 of the Convention;

Declares admissible, without prejudging the merits, the applicant Erol Direkçi's complaints concerning Articles 6 and 11 of the Convention;

Declares the remainder of the application inadmissible.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President