CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

Application no. 52514/99
by İrfan GÜR AND OTHERS
against Turkey

The European Court of Human Rights (Third Section), sitting on 20 October 2005 as a Chamber composed of:

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

Having regard to the above application lodged on 17 June 1999,

Having deliberated, decides as follows:

THE FACTS

The applicants, İrfan Gür, Seyit Pelitli, Mehmet Danacı, Levent Kepenek, Nuri Uğur and Mustafa Şala, are Turkish nationals who were born in 1970, 1975, 1965, 1960, 1974 and 1973 respectively and who were serving their prison sentences at various prisons in Turkey at the time of the application. They are represented before the Court by Mrs I.Gül Kireçkaya, a lawyer practising in İzmir.

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

On 11 November 1994 İrfan Gür and Mustafa Şala were arrested and taken into police custody by the anti-terror branch of the İzmir Security

Directorate on suspicion of membership in an illegal organisation, namely, the TKP/ML (Turkish Communist Party/Marxist-Leninist).

Mehmet Danacı, Seyit Pelitli, Nuri Uğur and Levent Kepenek were arrested and taken into custody for the same reason on 14, 15 and 16 November 1994 respectively.

On 24 November 1994 the applicants were brought before the public prosecutor and the İzmir State Security Court. The court ordered their remand in custody.

On 15 December 1994 the public prosecutor at the İzmir State Security Court filed a bill of indictment with the latter, accusing the applicants of membership in an illegal organisation. He requested that İrfan Gür, Mehmet Danacı and Mustafa Şala be convicted and sentenced under Article 168 § 1 of the Criminal Code and the other applicants be convicted and sentenced under Article 168 § 2 of the Criminal Code.

On 8 February 1995 the İzmir State Security Court commenced the trial of the applicants together with twenty-nine other co-accused.

Between 8 February 1995 and 3 October 1995 the court held five hearings. It is to be noted that the applicants did not submit the minutes of the hearings held after this date.

On 21 August 1997 the İzmir State Security Court convicted Mehmet Danacı, Mustafa Şala and İrfan Gür under Article 168 § 2 of the Criminal Code and sentenced them to twelve years and six months' imprisonment. It convicted the other applicants under Article 169 of the Criminal Code and sentenced them to three years and nine months' imprisonment.

On 18 November 1998 the Court of Cassation upheld the judgment of the first-instance court. The judgment of the Court of Cassation was deposited with the Registry of the İzmir State Security Court on 18 December 1998.

By a letter dated 8 March 2005 the applicants' representative informed the Court that İrfan Gür and Seyit Pelitli were currently living in İzmir and that Nuri Uğur and Levent Kepenek were living in Greece and in Germany, respectively.

COMPLAINTS

The applicants submit under Article 6 of the Convention that they did not receive a fair trial by an independent and impartial tribunal. They contend that the judges sitting on the bench of the State Security Court cannot be considered as independent and impartial as the military judge is attached to the Military Service and the civil judges attached to the Supreme Council of Judges and Public Prosecutors. In addition, the applicants complain that the fairness of the proceedings was also undermined by other shortcomings. In

particular, they allege that they were convicted on the basis of their statements in police custody taken under duress and that the domestic court's reasoned judgment did not take into account their arguments. They further submit that the written opinion of the principal public prosecutor at the Court of Cassation was never served on them, thus depriving them of the opportunity to put forward their counter-arguments.

The applicants further complain under Article 6 § 1 of the Convention about the length of their detention on remand and the length of the criminal proceedings.

The applicants complain under Article 14 of the Convention that they were discriminated against since the criminal procedures and the sentences for the offences tried before the State Security Court were different from the offences tried in other courts.

THE LAW

A. As regards the applicants Mustafa Şala and Mehmet Danacı

On 8 March 2005 the applicants' representative informed the Court that Mustafa Şala and Mehmet Danacı did not wish to pursue 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 Mustafa Şala and Mehmet Danacı (see 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 submitted by Mustafa Şala and Mehmet Danacı.

B. As regards the applicant Nuri Uğur

By a letter of 18 April 2005 the Registry sent a letter to the applicants' representative and asked, pointing out that the applicant Nuri Uğur was one of the applicants in the case *Metin Polat and Others v. Turkey* (application no. 48065/98, 15 January 2004), whether the applicant wished to pursue his complaint. As this letter remained without any reply, the Registry sent a reminder by registered mail. Attention was drawn to Article 37 § 1(a) of the Convention, and to the possibility that the Court might strike the case out of its list, in so far as it concerned Nuri Uğur, because he no longer intended to pursue it. The applicant's representative received this letter on 24 July 2004 but did not submit any reply to the Court.

The Court considers that in the circumstances the applicant may be regarded as no longer wishing to pursue his application within the meaning of Article 37 § 1 (a) 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 Nuri Uğur.

C. As regards the applicants Irfan Gür, Levent Kepenek and Seyit Pelitli

1. The applicants complain under Article 6 of the Convention about the presence of a military judge on the bench of the İzmir State Security Court. In addition, the applicants complain that the fairness of the proceedings was undermined by other shortcomings.

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of them to the respondent Government.

2. The applicants contend under Article 6 of the Convention that they were not tried by an independent and impartial tribunal, having regard to the fact that the civil judges sitting on the bench of the İzmir State Security Court are attached to the Supreme Council of Judges and Public Prosecutors.

The Court recalls that it has already rejected similar complaints concerning the independence and 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 instant case which would require it to depart from its findings in the above-mentioned cases.

Consequently, 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 applicants further complain under Article 6 § 1 of the Convention about the length of their detention on remand and the length of the criminal proceedings.

(a) The Court considers that the applicants' complaint pertaining to the length of their detention on remand should be examined under Article 5 § 3 of the Convention.

In the present case the applicants were detained on remand on 24 November 1994 and were convicted by the judgment of the İzmir State Security Court of 21 August 1997. On 18 November 1998 the Court of Cassation upheld the judgment of the İzmir State Security Court. Following

21 August 1997, the applicants were detained "after conviction by a competent court" and no longer "for the purpose of bringing her before the competent legal authority" (see *Turan v. Turkey* (dec.), no. 879/02, 27 January 2005). Accordingly, the period that has to be taken into consideration under Article 5 § 3 of the Convention started on 24 November 1994 and ended on 21 August 1997. As the applicants lodged their application with the European Court of Human Rights on 17 June 1999, this complaint has been introduced out of time.

Accordingly, this part of the application should be rejected for non-compliance with the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) As to the applicants' complaint pertaining to the length of the criminal proceedings, the Court recalls that the reasonableness of the length of the proceedings has to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, which in this instance call for an overall assessment (see, among many other authorities, *Cesarini v. Italy*, judgment of 12 October 1992, Series A no. 245-B, p. 26, § 17).

The Court notes that the criminal proceedings against the applicants began in November 1994, when the applicants' were arrested and taken into custody, and ended on 18 November 1998, when the Court of Cassation upheld the judgment of the İzmir State Security Court. They therefore lasted for four years before two instances.

The Court considers that the subject-matter of the case before the domestic courts can be considered as complex, taking into account that the case concerned various acts committed by the organisation TKP/ML during a certain period of time, and that the applicants were tried with twenty-nine co-accused.

As for the conduct of the parties, the applicants did not point to any specific periods of inactivity attributable to the authorities and did not provide the Court with the minutes of all the hearings. The case-file does not disclose any unreasonable delays in the processing of the case before the İzmir State Security Court which lasted approximately two years and nine months. Nor does the Court find that there were any excessive delays before the Court of Cassation. In this connection the Court recalls that while Article 6 requires that judicial proceedings be conducted expeditiously, it also lays emphasis on the more general principle of the proper administration of justice (see, for example, *Gast and Popp v. Germany*, no. 29357/95, p. 487, § 75, ECHR 2000-II).

Assessing the circumstances of the case as a whole and having regard to the overall length of the proceedings before two instances, the Court considers that the applicants' rights under Articles 6 § 1 were not breached. Accordingly, 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.

4. The applicants complain under Article 14 of the Convention that they were discriminated against since the criminal procedures and the sentences for the offences tried before the State Security Court were different from the offences tried in other courts.

The Court recalls that Article 14 is not concerned with all differences of treatment but only with those based on a personal characteristic ("status") by which persons or group of persons are distinguishable from each other (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark,* judgment of 7 December 1976, Series A no. 23, p. 29, § 56).

In the instant case, the distinction was made not between different groups of people, but between different types of offence, according to the legislature's view on their gravity (see, *mutatis mutandis*, *Gerger v. Turkey* [GC], no. 24919/94, § 69, 8 July 1999, and *Kömürcü v. Turkey* (dec.), no. 77432/01, 28 November 2002). The Court sees no ground for concluding that this practice amounts to a form of "discrimination" contrary to the Convention.

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

For these reasons, the Court unanimously

Decides to strike the case out of the list in so far as it concerns the applicants Mustafa Şala, Mehmet Danacı and Nuri Uğur;

Decides to adjourn the examination of the complaints introduced by İrfan Gür, Levent Kepenek and Seyit Pelitli concerning their right to a fair hearing by an independent and impartial tribunal;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President