

APPLICATION N° 22909/93

Stephan WALDBERG v/TURKEY

DECISION of 6 September 1995 on the admissibility of the application

Article 6, paragraph 1 of the Convention:

- a) *In determining the fairness of criminal proceedings, the Commission must examine them as a whole*
- b) *The Commission may examine how evidence has been adduced, but not how it has been assessed by the court, unless there has been gross unfairness or arbitrariness*

Article 8, paragraph 2 of the Convention: *Confiscation of personal documents. Interference in accordance with the law and considered, in exceptional circumstances, such as fighting terrorism, as necessary in a democratic society in the interests of national security and for the prevention of crime. Margin of appreciation of the national authorities*

Article 10, paragraph 1 of the Convention. *The applicant's conviction and the confiscation of personal documents which are in no way connected with his activity as a journalist do not amount to interference with the exercise of the right to freedom of expression*

Article 19 of the Convention: *The Commission is not competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a violation of the rights and freedoms set forth in the Convention*

THE FACTS

The applicant is a German citizen who was born in Waldkirch in 1964. He is a factory worker and lives in Freiburg.

In the proceedings before the Commission, he was represented by Mr. Mustafa Sezgin Tanrikulu, a lawyer practising in Diyarbakir.

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

On 23 October 1992 the applicant was arrested in the Turco-Iraqi border zone at Habur customs port (Turkey). The security forces searched the applicant's belongings and seized some of his personal effects, namely his diary and other items relating to the activities of the PKK (Marxist-Leninist Kurdistan Workers' Party) such as emblems, documents, photographs, cassettes and a letter addressed to the Kurdistan Committee in Germany. The applicant was taken into police custody on the same day (1).

On 29 October 1992, after questioning the applicant, the investigating judge ordered him to be detained on remand.

On 9 November 1992, the public prosecutor attached to Diyarbakir State Security Court instituted criminal proceedings against the applicant under Article 169 of the Criminal Code (2).

The applicant was assisted by an interpreter throughout the proceedings.

On 22 January 1993 Diyarbakir State Security Court sentenced the applicant to 3 years and 9 months' imprisonment for assisting an armed organisation. The applicant was ordered to pay the costs of the proceedings, including 4,000,000 Turkish liras (TRL) (3) in interpreting costs. The court also ordered, under Article 36 of the Criminal Code (4), confiscation of certain personal effects belonging to the applicant and of the articles seized on his arrest. The court noted that the applicant had spent more than 3 weeks in the PKK's camps in Iraqi territory, near the Turkish border, in the company of Kurdish fighters who had given him documents on their activities and a confidential letter addressed to the Kurdistan Committee in Germany. The court observed further that during questioning by the investigating judge, the applicant had stated categorically

(1) Article 128 of the Code of Criminal Procedure (in force at the material time).

"... in the case of collective offences ... the accused must be brought before a justice of the peace at the end of the investigation and, in any event, within fifteen days."

(2) Article 169 of the Criminal Code prohibits any assistance to an armed organisation.

(3) Approximately FRF 460.

(4) Article 36 of the Criminal Code:

"The court shall order confiscation of objects or documents which have been used to commit the offence or which were intended for use in the commission of the offence."

that he was not a journalist. It therefore rejected, on the facts, the applicant's defence that he was an independent reporter for a radio station in Germany and that he had gone to the area in that capacity.

The applicant appealed to the Court of Cassation against this judgment. In his grounds of appeal he contested the findings of fact and the assessment of the evidence made by the court of first instance. He invoked his right to the free assistance of an interpreter under the European Convention of Human Rights. He claimed further that his conviction violated Articles 8, 9 and 10 of the Convention.

In a decision of 28 April 1993, the Court of Cassation upheld the judgment of 22 January 1993, ruling that it had been given in accordance with the substantive and procedural law. The Court of Cassation stressed that the applicant had provided assistance and support to the PKK and that the PKK fitted the description of an armed organisation which advocates the secession of part of Turkish territory and commits acts of violence against civilians and the security forces.

COMPLAINTS

1 The applicant complains first that he was not given a fair trial, contrary to Article 6 para. 1 of the Convention, in so far as the criminal courts did not undertake a thorough examination of the handwriting in a letter which had been seized and used in evidence in the criminal proceedings. He submits that there were no valid grounds for his conviction.

2 The applicant also claims that he should not have been ordered to pay the interpreting costs. He alleges a violation of Article 6 para. 3 (e) of the Convention.

3 The applicant complains further of an unjustified interference with his right to respect for his private life in so far as the national authorities ordered confiscation of his address book, documents and photographs. He claims that Article 8 of the Convention has been violated in this respect.

4 The applicant complains, finally, of an interference with his freedom of thought and his freedom of expression, contrary to Articles 9 and 10 of the Convention, in that he was convicted on the basis of seized documents which, he alleges, related to his activities as a journalist.

THE LAW

1 The applicant claims that he should not have been ordered to pay the interpreting costs. He alleges a violation of Article 6 para. 3 (e) of the Convention in this respect.

The Commission considers that it cannot, at the current stage of the proceedings, give an opinion on the admissibility of this complaint but considers it necessary to give notice of this part of the application to the respondent Government pursuant to Article 48 para 2 (b) of the Convention

2 The applicant complains secondly that the criminal courts did not undertake a thorough examination of the handwriting in a letter which was seized and used in evidence in the criminal proceedings and that there were no valid grounds for his conviction. He claims that he was therefore deprived of a fair trial, contrary to Article 6 of the Convention

Article 6 para 1 of the Convention reads as follows

In the determination of any criminal charge against him, everyone is entitled to a fair hearing by an independent and impartial tribunal "

According to the established case law of the Convention organs, the question whether the proceedings have been conducted in accordance with the requirements of a fair trial, as provided for in Article 6 para 1 of the Convention, must be decided on the basis of an assessment of the proceedings as a whole (see Eur Court HR, Windisch judgment of 27 September 1990, Series A no 186, p 10, para 25)

The Commission recalls that it is not competent to examine an application relating to errors of fact or law allegedly committed by a domestic court, unless it considers that such errors might have involved a violation of the rights and freedoms set forth in the Convention. The assessment of evidence is in the first place a matter for the jurisdiction of the domestic courts and cannot be examined by the Commission unless there is reason to believe that the court drew arbitrary or grossly unfair conclusions from the facts submitted to it (No 7987/77, Dec 13 12 79, D R 18 p 31, No 8876/80, Dec 16 10 80, D R 23 p 233)

The Commission observes in this case that the applicant's complaints relate to Diyarbakır State Security Court's assessment of the evidence rather than how that evidence was adduced. The court did not base its judgment solely on the letter seized, but convicted the applicant on the basis of the facts and evidence as a whole. There is nothing to suggest that the court drew arbitrary conclusions from the facts submitted to it.

The Commission concludes that this part of the application is manifestly ill founded and must be rejected pursuant to Article 27 para 2 of the Convention.

3 The applicant complains, additionally, of an unjustified interference with his right to respect for his private life in so far as the domestic courts ordered confiscation of his address book, documents and photographs. He invokes Article 8 of the Convention, which provides that

"1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that these items were confiscated pursuant to a provision of the Turkish Criminal Code. They were therefore confiscated "in accordance with the law", as required by Article 8 para. 2 of the Convention. The Commission notes further that the items in question were confiscated in order to prevent the applicant or any other persons committing offences in future. The Commission observes that Article 8 para. 2 authorises interference with the rights guaranteed by paragraph 1 of that Article, *inter alia*, "for the prevention of crime" (see, *mutatis mutandis*, No 12592/86, Dec 6.3.89, D R 60 pp. 201, 204)

As regards the necessity of the interference in a democratic society, the Commission recalls that it is first and foremost for the domestic authorities to assess the necessity of an interference and that the State has a certain "margin of appreciation" in this regard (see Eur Court H R., Handyside judgment of 7 December 1976, Series A no 24, p. 23 para 49).

The Commission notes that in this case the courts found the applicant guilty of providing assistance and support to the PKK. It considers that legislative provisions for the confiscation of documents and personal effects are, in exceptional circumstances such as fighting terrorism, necessary in a democratic society in the interests of national security and for the prevention of crime. Measures taken against persons suspected of terrorist activities can be justified where national security interests are at stake (see, *mutatis mutandis*, Nos 8022/77, 8025/77, 8027/77, Comm Report 18 3 81, D.R 25 p 15)

The Commission concludes from the above that the confiscation of the applicant's belongings did not exceed the margin available to the State for the purposes set forth in Article 8 para. 2 of the Convention. The applicant's complaint in this respect must therefore be rejected as manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

4. The applicant also complains of an interference with his freedom of thought and his freedom of expression in so far as he considers that he was convicted on the basis of evidence relating to what he claims were his journalistic activities. He invokes Articles 9 and 10 of the Convention

The Commission considers that this complaint should be examined under Article 10 of the Convention

The Commission observes that the applicant's conviction was based exclusively on the assistance and support which he provided to the PKK. It notes that there is nothing on the file to support the applicant's claim that he was, in reality, convicted for his journalistic activities. The Commission therefore considers that there has been no interference with the applicant's freedom of expression within the meaning of Article 10 para. 1 of the Convention.

It follows that this part of the application is also manifestly ill-founded and must be rejected pursuant to Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously

ADJOURNS the examination of the applicant's complaint that he was ordered to pay the interpreting costs,

DECLARES INADMISSIBLE the remainder of the application