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

FOURTH SECTION

CASE OF SADAK AND OTHERS v. TURKEY (No. 2)

(Applications nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95)

JUDGMENT

STRASBOURG

11 June 2002

FINAL

06/11/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Sadak and Others v. Turkey (no. 2),

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mr J. MAKARCZYK,
Mr R. TÜRMEN,
Mrs V. STRÁŽNICKÁ,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 21 May 2002,

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

PROCEDURE

1. The case originated in nine applications (nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by thirteen Turkish nationals, Mr Selim Sadak, Mr Sedat Yurttaş, Mr Mehmet Hatip Dicle, Mr Sırrı Sakık, Mr Orhan Doğan, Mrs Leyla Zana, Mr Ahmet Türk, Mr Nizamettin Toguç, Mr Naif Güneş, Mr Mahmut Kılınç, Mr Zübeyir Aydar, Mr Ali Yiğit, and Mr Remzi Kartal ("the applicants"), on 23 August 1994 (no. 25144/94) and 16 December 1994 respectively.

2. The applicants were represented before the Court by Mr H. Kaplan, a lawyer practising in Istanbul, and Mr Y. Alataş, a lawyer practising in Ankara (nos. 25144/94, 27100/95 and 27101/95), and by Mr P. Leach, a lawyer attached to the Kurdish Human Rights Project, a non-governmental organisation based in London (nos. 26149/95 to 26154/95). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicants complained that they had been forced to vacate their parliamentary seats following the dissolution of the Democracy Party ("the DEP") by the Constitutional Court and alleged the violation of Articles 5, 6, 7, 9, 10, and 11 of the Convention and Article 1 of Protocol No. 1.

4. On 22 May 1995 the Commission decided to join the applications and to give notice of them to the Government.

5. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

6. The applications were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

7. By a decision of 6 January 2000 the Chamber decided that the applications should also be examined under Article 3 of Protocol No. 1.

8. By a decision of 30 May 2000 the Chamber declared the applications admissible with the exception of application no. 25144/94, which it declared partly inadmissible in so far as it concerned Article 5 of the Convention [*Note by the Registry*. The Court's decision is obtainable from the Registry].

9. The applicants and the Government each filed written observations on the merits of the case (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*). Comments were also received from a non-governmental organisation in London, Interights – The International Centre for the Legal Protection of Human Rights, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

10. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). These cases were assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicants, who were born in 1954, 1961, 1955, 1957, 1955, 1961, 1942, 1951, 1956, 1946, 1961, 1959 and 1948 respectively, are Turkish nationals. They were members of the Turkish Grand National Assembly and the DEP (Democracy Party – *Demokrasi Partisi*), a political party which was dissolved by the Constitutional Court on 16 June 1994.

12. On 7 May 1993 the DEP was founded and the appropriate declaration submitted to the Ministry of the Interior.

13. On 2 November 1993 Principal State Counsel at the Court of Cassation ("Principal State Counsel") applied to the Constitutional Court for the DEP to be dissolved. In his application he accused the DEP of having infringed the principles of the Constitution and the law on political parties. He considered that declarations made by various members of the DEP's central committee and its former chairman during two meetings held abroad (at Erbil in Iraq and Bonn in Germany) were likely to undermine the integrity of the State and national unity.

14. On 1 March 1994 the Constitutional Court decided of its own motion to obtain the oral submissions of certain interested parties. Thus, on 22 March 1994 it took evidence from the applicant Mr Kartal, in his

capacity as the vice-chairman of the DEP, and from Mr Kaplan, in his capacity as the party's legal representative.

15. On 2 March 1994 the Grand National Assembly lifted the parliamentary immunity of some of the DEP's MPs, including that of the applicants, in response to a series of applications made by the public prosecutor at the Ankara National Security Court.

16. On the same day Mr Dicle and Mr Doğan were arrested as they were leaving parliament, and taken into police custody. On 4 March 1994 the same thing happened to Mr Sakık, Mr Türk and Mrs Zana. The arrest of Mr Yurttaş and Mr Sadak, who had remained inside the parliament building, was prevented by the Speaker of the National Assembly on the ground that they were still members of parliament.

17. On 16 June 1994 the Constitutional Court ordered the dissolution of the DEP on the ground that it had undermined the territorial integrity of the State and national unity.

18. The Constitutional Court also declared that the parliamentary seats of all the applicants were forfeited as a secondary measure attending the decision to dissolve the DEP. The measure was not applied to four MPs who had recently left the party.

19. On the same day, fearful of the consequences of the criminal proceedings brought against them, Mr Toguç, Mr Güneş, Mr Kılınç, Mr Aydar, Mr Yiğit and Mr Kartal went abroad (to Brussels).

20. On 1 July 1994 Mr Sadak and Mr Yurttaş went to the public prosecutor's office with their lawyer and were placed in custody.

21. On a later date Principal State Counsel filed submissions in which he accused the applicants of separatism and undermining the integrity of the State, both of these being capital offences under Article 125 of the Criminal Code.

22. The Ankara National Security Court gave judgment on 8 December 1994. Applying section 8 of the Prevention of Terrorism Act (Law no. 3713), it sentenced Mr Sakık to three years' imprisonment for separatist propaganda. Mr Türk, Mr Dicle, Mr Doğan, Mr Sadak and Mrs Zana were each sentenced to fifteen years' imprisonment for membership of an armed gang pursuant to Article 168 of the Criminal Code and Mr Yurttaş was sentenced to seven and a half years' imprisonment for assisting and supporting an armed gang, an offence under Article 169 of the Criminal Code.

23. On an appeal on points of law by the applicants and Principal State Counsel on 26 October 1995, the Court of Cassation quashed Mr Türk's and Mr Yurttaş's convictions and ordered their release on the ground that they had contravened only section 8 of the Prevention of Terrorism Act. The Court upheld the other applicants' convictions.

II. RELEVANT DOMESTIC LAW

24. The relevant provisions of the Constitution provide as follows:

Article 5

"The fundamental aims and duties of the State shall be to safeguard the independence and integrity of the Turkish nation, its territorial unity, the Republic and democracy, to ensure the well-being, peace and happiness of both individuals and society, and to endeavour to remove any political, economic or social barrier restricting the fundamental rights and freedoms of the individual in a manner incompatible with the principles of equality before the law and justice and to secure the conditions required for the material and spiritual development of the individual."

Article 10

"Everyone shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds.

No privileges shall be granted to any individual, family, group or class.

Organs of State and administrative authorities shall be required to comply in everything they do with the principle of equality before the law."

Article 69 (as in force at the material time)

"Political parties shall not engage in activities other than those referred to in their constitutions and programmes, nor shall they disregard the restrictions laid down by Article 14 of the Constitution, on pain of permanent dissolution. ...

The decisions and internal running of political parties shall not be contrary to democratic principles. ...

Immediately a political party is formed, Principal State Counsel shall verify as a matter of priority that its constitution and programme and the legal position of its founder members are consistent with the Constitution and the laws of the land. He shall also monitor its activities.

Political parties may be dissolved by the Constitutional Court, on application by Principal State Counsel.

Founder members and leaders, at whatever level, of political parties which have been permanently dissolved may not become founder members, leaders or auditors of any new political party, nor shall a new party be formed if a majority of its members previously belonged to a party which has been dissolved."

Article 69 § 8 (as worded after the constitutional amendment of 1995)

"... Members and leaders whose declarations and activities lead to the dissolution of a political party may not be founder members, leaders or auditors of another political party for a period of five years from the date on which the reasoned decision to dissolve the party is published in the Official Gazette ..."

Article 84 § 3 (as in force at the material time)

"... The term of office of a member of parliament whose words and deeds have, according to the Constitutional Court's judgment, led to the dissolution of his party, and that of other members who belonged to the dissolved party on the date when the action for dissolution was brought, shall end on the date when the Presidency of the Grand National Assembly is notified of the dissolution order."

Article 84 § 5 (as worded after the constitutional amendment of 1995)

"... The term of office of a member of parliament whose words and deeds have, according to the Constitutional Court's judgment, led to the dissolution of his party, shall end on the date when that judgment is published in the Official Gazette. The Presidency of the Grand National Assembly shall enforce that part of the judgment and inform the plenary Assembly accordingly."

25. The relevant provisions of the Criminal Code provide:

Article 125

"It shall be an offence punishable by death to commit any act aimed at subjecting the State or part of the State to domination by a foreign State, diminishing the State's independence, breaking its unity or removing part of the national territory from the State's control."

Article 168

"Any person who, with the intention of committing the offences defined in Article 125 ..., forms an armed gang or organisation or takes leadership ... or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years' imprisonment.

The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment."

Article 169

"Any person who, knowing that such an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons and ammunition or clothes or facilitates its operations in any manner whatsoever shall be sentenced to not less than three and not more than five years' imprisonment ..."

26. Section 8(1) of the Prevention of Terrorism Act (Law no. 3713), as amended by Law no. 4126 of 27 October 1995, which came into force on 30 October 1995, provides:

> "Written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation are prohibited. Any person who engages in such an activity shall be sentenced to not less than one and not more than three years' imprisonment and a fine of from one hundred million to three hundred million Turkish liras. The penalty imposed on a reoffender may not be commuted to a fine."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

27. Article 3 of Protocol No. 1 provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

28. The applicants insisted on the predominant role of elected representatives in a pluralist, democratic and parliamentary system. They disputed the reasons given by the Constitutional Court in its decision to dissolve the party. They contended that in the speeches at issue the DEP's leaders had done no more than highlight the Kurdish identity of certain citizens and the need to promote the language and culture of the "Kurdish people" and introduce legislation in that connection.

29. Referring to the Resolution of 30 June 1994 in which the Parliamentary Assembly of the Council of Europe made observations on this subject, the applicants submitted that pluralism in a democratic society required the free expression of all opinions even if they did not correspond to those expressed by the government. The applicants' forfeiture of their parliamentary seats following the dissolution of the DEP had had the effect of preventing a part of the population from taking part in political debate and had thus led to an infringement of Article 3 of Protocol No. 1.

30. Referring to *Mathieu-Mohin and Clerfayt v. Belgium*, the Government asserted that Article 3 of Protocol No. 1 applied only to election to the legislature and that the word "legislature" was to be interpreted according to the State's constitutional structure. They reiterated that the applicants' forfeiture of their parliamentary seats had been the consequence of the DEP's dissolution pursuant to the provisions of the Constitution. That measure had pursued several legitimate aims, namely the

protection of public safety and national security as well as the preservation of the democratic system and territorial integrity.

31. The Court points out that implicit in Article 3 of Protocol No. 1 are the subjective rights to vote and to stand for election. Although those rights are important, they are not absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see the following judgments: *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, Series A no. 113, p. 23, § 52; *Gitonas and Others v. Greece*, 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 233, § 39; *Ahmed and Others v. the United Kingdom*, 2 September 1998, *Reports* 1998-VI, p. 2384, § 75; and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV).

32. The Court would also point out that Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective political democracy, and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt*, cited above, p. 22, § 47). As to the links between democracy and the Convention, the Court has made the following observations (see, among other authorities, *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, pp. 21-22, § 45, and *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, §§ 47-48, ECHR 2002-II):

> "Democracy is without doubt a fundamental feature of the European public order ... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political traditions, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ..."

33. Furthermore, the Court, like the Commission, considers that this Article guarantees the individual's right to stand for election and, once elected, to sit as a member of parliament (see *Ganchev v. Bulgaria*, no. 28858/95, Commission decision of 25 November 1996, Decisions and

Reports 87, p. 130, and *Gaulieder v. Slovakia*, no. 36909/97, Commission's report of 10 September 1999, § 41).

34. The Court has already held that "[w]hile freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament ... call for the closest scrutiny on the part of the Court" (see *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, pp. 22-23, § 42).

35. Even supposing that the measure in question pursued one or more legitimate aims, as the Government maintained, the Court considers that it was not proportionate to those aims for the reasons outlined below.

36. In the instant case it must be noted that the reasons given by the Constitutional Court in its judgment of 16 June 1994 ordering the dissolution of the DEP related to speeches given when abroad by the former chairman of the party and a written declaration made by the party's central committee. Following the party's dissolution and pursuant to the provisions of the law on political parties and Article 84 § 3 of the Constitution, which at the material time provided a system for the automatic forfeiture of parliamentary office, the applicants, who were members of parliament and the DEP, were forced to vacate their parliamentary seats.

37. To assess the proportionality of that measure, the Court considers it important to note that as a result of the amendment to Article 84 § 5 of the Constitution, only the seat of a member of parliament whose words and deeds have, according to the Constitutional Court's judgment, led to the dissolution of his party must be forfeited (see Article 84 § 3 of the Constitution in force at the material time). In the instant case, the forfeiture of the applicants' parliamentary seats was the consequence of the dissolution of the political party of which they were members and occurred regardless of their personal political activities.

38. The Court notes the extreme harshness of the measure in question. The DEP was immediately and permanently dissolved and the applicants, who had been DEP MPs, were prohibited from engaging in their political activities and could no longer fulfil their mandate.

39. The Court considers in this connection that the nature and severity of the interferences are factors to be taken into account when assessing their proportionality (see, for example, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 64, ECHR 1999-IV).

40. Having regard to all of the above considerations, the Court concludes that the penalty imposed on the applicants by the Constitutional Court cannot be regarded as proportionate to any legitimate aim relied on by the Government. The Court therefore considers that the measure in question was incompatible with the very substance of the applicants' right to be elected and sit in parliament under Article 3 of Protocol No. 1 and infringed

the sovereign power of the electorate who elected them as members of parliament.

It follows that there has been a violation of Article 3 of Protocol No. 1 in the instant case.

II. ALLEGED VIOLATION OF ARTICLES 7, 9, 10, 11 AND 14 OF THE CONVENTION

41. The applicants alleged that the forfeiture of their parliamentary seats following the dissolution of the DEP by the Constitutional Court had infringed their right to freedom of association under Article 11 of the Convention. They also alleged a violation of Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 14 (prohibition of discrimination) of the Convention.

Article 11 of the Convention provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

42. In the Government's submission, parliamentary office was one of the highest public positions in the State, attracting extensive immunities and privileges, which were attached not to the person of each member of parliament but to their office. Referring to *Glasenapp* and *Kosiek v. Germany* (judgments of 28 August 1986, Series A nos. 104 and 105), they maintained that the instant cases mainly related to access to the civil service, a right which was not guaranteed by the Convention.

43. The Government asserted that the disputed decision made by the Constitutional Court had been based on Article 84 of the Constitution. They pointed out that, since the constitutional amendment introduced in 1995, Article 84 had only continued to have that consequence in respect of members of parliament whose words and deeds had led to the dissolution of their political party.

44. The Government pointed out that freedom of association – like freedom of expression – was not absolute and often conflicted with other paramount interests in a democratic society. Accordingly, the margin of appreciation had to be gauged in the light of the legitimate aim pursued by the interference and the background to the facts of the case. They asserted that the speeches given by the DEP's leaders to the public had been apt to

incite part of the population to revolt and give rise in them to feelings of hatred, violence and ethnic discrimination, particularly when they described "Turks" as "enemies", advocated the establishment of an independent Kurdish State and totally repudiated the Republic of Turkey as a whole. The applicants had never once criticised those speeches and had never severed their ties with the PKK, the Workers' Party of Kurdistan.

45. The applicants maintained that the provisions on political parties and Article 84 of the Constitution, which established a system of automatic forfeiture of parliamentary office following the dissolution of a political party, were incompatible with the Convention, in particular its Preamble and Articles 9, 10 and 11. They submitted that they had in no way caused the dissolution of the DEP by their words or deeds and concluded from that that the interference in question had not been justified under paragraph 2 of Article 11 of the Convention.

46. The applicants submitted that the forfeiture of their parliamentary seats was contrary to Article 7 of the Convention, the relevant part of which provides:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. ..."

47. Having regard to its conclusion as to compliance with Article 3 of Protocol No. 1, the Court does not consider it necessary to examine these complaints.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

48. The applicants alleged that they had been unjustly deprived of the benefit of their parliamentary remuneration in breach of Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

49. It should be pointed out that the measures about which the applicants complained were the secondary effects of the forfeiture of their parliamentary seats, which has been found by the Court to constitute a violation of Article 3 of Protocol No. 1. Consequently, there is no need to examine that complaint separately.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

50. The applicants complained that they had not had a fair trial in the Constitutional Court in so far as their rights of defence had been restricted during those proceedings. They considered this to amount to a violation of Article 6 § 1 of the Convention.

51. The Government submitted that Article 6 § 1 was not applicable to the facts of the case.

52. Having regard to its conclusion as to compliance with Article 3 of Protocol No. 1, the Court does not consider it necessary to examine this complaint.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicants alleged that they had sustained pecuniary damage corresponding to what they would have earned as members of parliament had they not been forced to vacate their seats and the loss of earnings they endured as a result of the restrictions to their civic rights. They assessed that damage at 882,300 United States dollars (USD) for Mahmut Kılınç, USD 573,300 for Nizamettin Toguç, USD 681,300 for Ali Yiğit, USD 413,300 for Remzi Kartal, USD 1,872,300 for Zübeyir Aydar, USD 338,500 for Naif Güneş and USD 548,700 each for Ahmet Türk, Sırrı Sakık and Sedat Yurttaş. Under the head of non-pecuniary damage, the same applicants, except for Naif Güneş, each claimed USD 5,000,000. Selim Sadak, Leyla Zana, Hatip Dicle and Orhan Doğan referred to the claim they had already made in connection with applications nos. 29900/96, 29901/96, 29902/96 and 29903/96, which the Court had already examined (see *Sadak and Others v. Turkey (no. 1)*, ECHR 2001-VIII). The applicants did not produce any vouchers in support of their claims.

55. The Government argued that a member of parliament's salary was paid for the performance of quite specific functions and that, following the forfeiture of his seat, a member of parliament no longer had that status and no longer had the right to be paid. The Government submitted that the applicants' claim in respect of non-pecuniary damage was excessive and would be likely to lead to unjust enrichment.

56. The Court considers that irrespective of the dissolution of the DEP, because of the forfeiture of their parliamentary seats, the applicants undoubtedly sustained pecuniary damage, which, however, cannot be assessed with precision. To that must be added non-pecuniary damage, which the finding of a violation in this judgment is not sufficient to make good. That being so, the Court, making its assessment on an equitable basis as required by Article 41, awards 50,000 euros (EUR) to each applicant in respect of all heads of damage taken together.

B. Costs and expenses

57. In respect of the costs and expenses relating to their legal representation in the Constitutional Court and in Strasbourg, Selim Sadak, Leyla Zana, Hatip Dicle, Orhan Doğan, Ahmet Türk, Sırrı Sakık and Sedat Yurttaş together claimed USD 33,000. With regard to Mr Alataş's and Mr Kaplan's fees, they sought an additional total of USD 200,000.

The other applicants sought 3,460 pounds sterling (GBP) for their British lawyers' fees and their costs and expenses together with GBP 20,042 for fees, administrative and translation costs and travel expenses incurred by the Kurdish Human Rights Project (KHRP) when assisting with the applications. The applicants did not produce any vouchers in support of their claims.

58. The Government argued that the costs of the applicants' representation before the Constitutional Court could not be relevant here as that was unconnected with the proceedings before the Strasbourg institutions.

The Government said these claims were manifestly excessive, particularly the amount in respect of fees. They submitted that the claims should not be accepted as this would inflate the award into unjust enrichment.

59. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In that connection, it should be pointed out that the Court may award the applicant not only the costs and expenses incurred before the Convention institutions, but also those incurred in the national courts for the prevention or redress of a violation found by the Court (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 45, ECHR 1999-I).

60. As to the costs claimed by the KHRP, the Court is not persuaded that the latter's participation in the proceedings justifies an award and so it rejects that claim. Making its assessment on an equitable basis in the light of the evidence in its possession, the Court awards Selim Sadak, Leyla Zana, Hatip Dicle, Orhan Doğan, Ahmet Türk, Sırrı Sakık and Sedat Yurttaş

together EUR 10,500 and Nizamettin Toguç, Naif Güneş, Mahmut Kılınç, Zübeyir Aydar, Ali Yiğit and Remzi Kartal together EUR 9,000, in respect of all costs and expenses.

C. Default interest

61. The Court considers it appropriate to set default interest at an annual rate of 7.25%.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of Protocol No. 1;

2. *Holds* that it is unnecessary to examine whether there has been a violation of Articles 7, 9, 10, 11 and 14 of the Convention;

3. *Holds* that it is unnecessary to examine whether there has been a violation of Article 1 of Protocol No. 1;

4. *Holds* that it is unnecessary to examine whether there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, plus any tax or stamp duty that may be chargeable at the time of payment, to be converted into Turkish liras at the rate applicable on the date of settlement:
      (i) EUR 50,000 (fifty thousand euros) to each of the applicants, all heads of damage taken together;
      (ii) for costs and expenses, EUR 10,500 (ten thousand five hundred euros) to Selim Sadak, Leyla Zana, Hatip Dicle, Orhan Doğan, Ahmet Türk, Sırrı Sakık and Sedat Yurttaş together and EUR 9,000 (nine thousand euros) to Nizamettin Toguç, Naif Güneş, Mahmut Kılınç, Zübeyir Aydar, Ali Yiğit and Remzi Kartal together;
   (b) that simple interest at an annual rate of 7.25% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 11 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Sir Nicolas BRATZA
President