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

FIRST SECTION

CASE OF YAKAN v. TURKEY

(Application no. 43362/98)

JUDGMENT
(Striking out)

STRASBOURG

19 September 2000

In the case of Yakan v. Turkey,

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

Mrs W. THOMASSEN, *President*,
Mr L. FERRARI BRAVO,
Mr Gaukur JÖRUNDSSON,
Mr B. ZUPANČIČ,
Mr T. PANŢÎRU,
Mr R. MARUSTE, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 31 August 1999 and 29 August 2000,

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

PROCEDURE

1. The case originated in an application (no. 43362/98) 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 a Turkish national, Mr Osman Nuri Yakan ("the applicant"), on 11 April 1996.

2. The Government of the Republic of Turkey ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against him.

4. The application was 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).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge, the judge elected in respect of Turkey, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be joined with other applications against the same respondent State raising the same complaints (applications nos. 26480/98, 28291/95, 29280/95, 26699/96, 29700/96, 29701/96, 29702/96, 29703/96, 29911/96, 29912/96,

29913/96, 31831/96, 31834/96, 31853/96, 31880/96, 31891/96, 31960/96, 32964/96, 32987/96, 32900/96, 33362/96, 33369/96, 33645/96, 34591/96, 34687/96, 39428/96 and 43362/96) (Rule 43 § 2).

7. On 16 March 1999 the Registry of the Court sent the Government's observations to the applicant's representative and invited him to submit his observations in reply to the Government's before 27 April 1999.

8. Since no observations were submitted the Registrar on 1 July 1999 sent a reminder to the applicant. No reply was received.

9. By a decision of 31 August 1999 the Chamber declared the application admissible.

10. By registered letter of 13 September 1999, the Registrar informed the applicant's representative that the application had been declared admissible. He invited the applicant's representative to submit his post-admissibility observations and his proposals for the purpose of securing a friendly settlement before 10 November 1999.

11. By registered letter of 11 May 2000, the Registrar repeated this request in his letter of 13 September 1999 and warned the applicant's representative that, failing a reply, the Court might conclude that the applicant was no longer interested in pursuing the application. No reply has been received to that letter.

12. On 22 February 1999 the Government filed observations on the merits (Rule 59 § 1).

THE FACTS

13. On 7 October 1981 police officers from the Ordu Security Department arrested the applicant on suspicion of membership of an illegal organisation, the Dev-Yol (*Revolutionary Way*).

14. On 18 November 1981 the Ordu Martial Law Court (*sıkıyönetim mahkemesi*) ordered the applicant's detention on remand.

15. On 26 February 1982 the military public prosecutor filed a bill of indictment with the Ordu Martial Law Court accusing the applicant of membership of an organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime, contrary to Article 146 § 1 of the Turkish Criminal Code.

16. In 1988 the applicant was released pending trial.

17. On 19 July 1989 the Ordu Martial Law Court convicted the applicant of membership of an illegal organisation, namely the Dev-Yol, contrary to Article 168 § 1 of the Turkish Criminal Code. The Court sentenced the applicant to 5 years and 2 months' imprisonment. The applicant lodged an appeal with the Military Court of Cassation (*askeri yargıtay*).

18. Following promulgation of the Law of 27 December 1993, which abolished the jurisdiction of the martial law courts, the Court of Cassation (*yargıtay*) acquired jurisdiction over the case and the file was transmitted to it.

19. On 27 December 1995 the Court of Cassation quashed the judgment of 19 July 1989 on the ground that the applicant should have been convicted of an offence under Article 146 of the Turkish Criminal Code. It referred the case to the Ankara Assize Court.

20. According to the last information submitted by the applicant, the criminal proceedings were still pending against him before the Ankara Assize Court on 1 March 1999.

THE LAW

21. The Court notes that the applicant has repeatedly failed to respond to its letters addressed to him. On 11 May 2000 a registered letter was sent to the applicant reminding him that, pursuant to Article 37 § 1 (a) of the Convention, the Court might at any stage of the proceedings decide to strike the case out of its list of cases if the circumstances of the case indicated that the applicant did not intend to pursue his application.

22. Article 37 § 1 of the Convention, insofar as relevant, provides as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;..."

23. Having regard to the applicant's failure to communicate with the Court, the Court finds that the applicant does not intend to pursue his application within the meaning of the above-quoted Article.

24. The Court, bearing in mind the existence of a number of cases against Turkey pending before it which raise similar issues to those considered in the present case, considers that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine* of the Convention).

25. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to disjoin the application from other applications joined pursuant to Rule 43 § 1;

2. *Decides* to strike the case out of the list.

Done in English, and notified in writing on 19 September 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Wilhelmina THOMASSEN
President