



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

FIRST SECTION

CASE OF ŞAHİN v. TURKEY

(Application no. 31961/96)

JUDGMENT

STRASBOURG

25 September 2001

FINAL

25/12/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Şahin v. Turkey,

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

Mrs E. PALM, *President*,

Mr L. FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr B. ZUPANČIČ,

Mr T. PANȚIRU,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 January 2000 and on 4 September 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 31961/96) 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 Metin Şahin ("the applicant"), on 7 June 1996.

2. The applicant was represented by Mr Mehdi Bektaş, a lawyer practising in Ankara (Turkey). The Turkish Government did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged, in particular, that the criminal proceedings brought against him had not been concluded within a "reasonable time" and that his right to a fair hearing had been breached since he had been convicted on the basis of the statements he had made to the police under duress.

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, in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 11 January 2000, the Chamber retained the applicant's complaint concerning the length of the criminal proceedings against him and declared the remainder of his complaints inadmissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Arrest and detention of the applicant

8. On 19 September 1979 police officers from the Ankara Security Directorate arrested the applicant on suspicion of membership of an illegal armed organisation, the Dev-Yol (Revolutionary Way).

9. On 24 September 1979 the Ankara Martial Law Court (*sıkıyönetim mahkemesi*) ordered the applicant's detention on remand.

10. On 5 March 1980 the Military Public Prosecutor filed a bill of indictment with the Ankara Martial Law Court accusing the applicant of membership of an illegal organisation, the Ö.T.K. The Public Prosecutor further alleged that the applicant was the representative of the Dev-Yol within the Ö.T.K.

11. On 12 June 1980 the applicant was released pending trial.

12. On 26 September 1980 police officers re-arrested the applicant during his treatment at Y.I.'s house subsequent to his injury in the course of clashes which resulted in the killing of M.V. and M.G.

13. On 1 February 1981 the police officers questioned the applicant at the Ankara Security Directorate, where he admitted that he had been involved in the Ö.T.K.

14. On 3 March 1981 the applicant was questioned by the Military Public Prosecutor. The applicant denied the allegation that he was a member of the Dev-Yol but conceded that he had been involved in the Ö.T.K.

15. On 4 March 1981 the Ankara Martial Law Court remanded the applicant in custody.

B. Trial in the Ankara Martial Law Court

16. On 26 February 1982 the Military Public Prosecutor filed a bill of indictment with the Martial Law Court against the applicant and 722 other defendants. The Public Prosecutor accused the applicant of membership of the Dev-Yol, whose object was to undermine the constitutional order and replace it with a Marxist-Leninist regime. He further charged the applicant with having been involved in a number of crimes such as the killings of M.V. and M.G., opening fire on a house and collecting money for the Dev-Yol.

The prosecution sought the death penalty under Article 146 § 1 of the Turkish Criminal Code. It was further decided that this indictment should be joined to the indictment of 5 March 1980.

17. In a judgment of 19 July 1989 the Martial Law Court convicted the applicant on account of his involvement in the killing of M.V. and M.G. and his activities in the Ö.T.K. The court sentenced the applicant to 4 years and 6 months' imprisonment under Article 168 § 2 of the Turkish Criminal Code.

The court also convicted the applicant of membership of the Dev-Yol and sentenced him to lifetime imprisonment (in effect 18 years assuming good conduct) for offences under Article 146 § 1 of the Turkish Criminal Code, permanently debarred him from employment in the civil service and placed him under judicial guardianship.

C. Proceedings on appeal

18. As the applicant's sentence exceeded 15 years' imprisonment, his case was automatically referred to the Military Court of Cassation (*askeri yargıtay*).

19. 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 case file was transmitted to it.

20. On 27 December 1995 the Court of Cassation upheld the applicant's conviction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. Article 146 § 1 of the Turkish Criminal Code provides:

“Whosoever shall attempt to alter or amend in whole or in part the Constitution of the Turkish Republic or to effect a coup d'état against the Grand National Assembly formed under the Constitution or to prevent it by force from carrying out its functions shall be liable to the death penalty.”

22. Article 168 of the Criminal Code reads:

“Any person who, with the intention of committing the offences defined in Articles ..., 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.”

THE LAW

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

23. The applicant complains about the length of the criminal proceedings against him. He alleges a violation of Article 6 § 1 of the Convention, which provides, as relevant:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. The Court’s jurisdiction *ratione temporis*

24. The Court observes that a question arises as to its jurisdiction *ratione temporis* in respect of the instant application in view of the entry into force of Protocol No. 11 to the Convention.

25. The Court notes in this connection that on 1 November 1998, by operation of Protocol No. 11, applications such as the present one pending before the Commission (see paragraph 4 above) which have not been declared admissible fell to be examined by the Court in accordance with the provisions of that Protocol. Given that the object of Article 5 § 2 of the Protocol is to provide for the examination of former Commission cases as part of transitional arrangement, the former Court no longer being in existence, the Court’s jurisdiction *ratione temporis* is determined by the date of the respondent State’s acceptance of the right of individual petition.

26. Accordingly, the considerations which led the former Court in its *Mitap and Müftüoğlu v. Turkey* judgment of 25 March 1996 (*Reports of Judgments and Decisions* 1996-II, pp. 410-411, §§ 26-28) to determine its jurisdiction *ratione temporis* in respect of the complaints raised in that case as of 22 January 1990, the date of the respondent State’s acceptance of its jurisdiction, cannot be invoked to confine its jurisdiction to facts or events occurring since that date (see *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 26, ECHR 2001- ...).

The Court notes that this conclusion has not been disputed.

B. Merits of the complaints

1. Period to be taken into consideration

27. The Court notes that the proceedings began on 19 September 1979, the date of the applicant's arrest, and ended on 27 December 1995 when the Court of Cassation upheld the applicant's conviction. They therefore lasted almost sixteen years and three months.

28. However, the Court can consider the period of almost eight years and eleven months that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition (see paragraph 25 above). It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (see, as the most recent authority, the above-mentioned Cankoçak judgment, § 25). On the critical date the proceedings had already lasted seven years and four months.

2. Reasonableness of the length of proceedings

29. The reasonableness of the length of the impugned period is to be assessed in the light of the circumstances of the case and having regard 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 (see, among many other authorities, the above-mentioned Mitap and Müftüoğlu judgment, p. 411, § 32).

30. The Government underlined the complexity of the case and the nature of the charges the applicant faced. They pointed out that the applicant was accused of more than twenty crimes and was convicted of murder and bombing offences. The courts had to deal with a trial involving 723 defendants, including the applicant. The authorities needed time to establish the scope and activities of the terrorist network of which the applicant was alleged to be a member. The Martial Law Court followed an expedited procedure and made every necessary effort to speed up the trial. It held more than five hundred hearings, at a rate of three per week. The public prosecutor had to study two thousand pages of written submissions in order to prepare his indictment. The file comprised approximately one thousand loose-leaf binders and the summary of the judgment ran to no fewer than two hundred and sixty-four pages.

In sum, the Government contended that these factors explained the length of the proceedings and that no negligence or delay was imputable to the judicial authorities.

31. The applicant submitted in reply that the complexity of the case and the large number of defendants cannot justify the delay in the proceedings which lasted sixteen years. He asserted in this connection that during the impugned period he could not continue his education, that he could not find

a job thereafter, that he has lost his health and that he had suffered pecuniary and non-pecuniary damage.

32. The Court acknowledges the Government's submission that the case was a complex one owing to the large number of defendants, the seriousness of the charges and the courts' difficulties in handling a large-scale trial. However, as the case cannot be explained in terms of the complexity of the issues involved, the Court will examine it in the light of the conduct of the applicant and the national authorities (see paragraph 29 above).

33. In this regard, it is to be noted that the respondent Government have not made any criticism of the applicant's behaviour at any stage of the trial. The Court reiterates that the length of the proceedings can only be explained by the failure of the domestic courts to deal with the case diligently (see the Cankoçak judgment cited above, § 32).

34. It observes in this connection that the Martial Law Court reached a verdict in almost nine years and ten months. It took the Military Court of Cassation more than four years to rule on the appeal. Furthermore, the Court of Cassation gave judgment on 27 December 1995, approximately two years after it had been seized of the case. The Court does not dispute the Government's assertion that the delay in the delivery of a final judgment on the applicant's case was caused to a large extent by the complexity of the case. The Court further observes that the legislative changes resulting from transfer of the jurisdiction over the case from the military courts to civil ones was a contributing factor to the delay at issue.

35. However, the Court recalls in this respect that, as it has repeatedly held, Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among other authorities, *Pelissier and Sassi v. France* [GC], p. 301, § 74, no. 25444/94, ECHR 1999-II). Therefore, the delay in the criminal proceedings against the applicant must be attributed to the national authorities. For these reasons the Court concludes that the length of the criminal proceedings failed to meet the "reasonable time" requirement.

36. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed the sum of 500,000 French francs (FRF) by way of compensation for pecuniary and non-pecuniary damage. He referred in this connection to the unjustified length of the criminal proceedings and to his claims, *inter alia*, that he could not continue his education, that he has lost his health and that he could not find a job thereafter for a very considerable period.

39. The Government did not make any comments on the applicant's claim.

40. The Court considers that the applicant must have suffered a certain amount of distress, having regard to the total length of the proceedings against him. Deciding on an equitable basis, it awards him the sum of FRF 100,000.

B. Costs and expenses

41. The applicant did not submit any claims under this head.

42. The Government did not make any observations under this head of claim either.

43. The Court considers that the applicant must be taken to have waived his right to an award under this head having regard to his failure to submit a claim.

C. Default interest

44. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4,26% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, in respect of non-pecuniary damage FRF 100,000 (one hundred thousand French francs), together with any tax that may be chargeable, to be converted into Turkish liras at the rate applicable on the date of the settlement;

(b) that simple interest at an annual rate of 4,26% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 25 September 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President