CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF AKÇAM v. TURKEY

(*Application no. 32964/96*)

JUDGMENT

STRASBOURG

30 October 2001

FINAL

30/01/2002

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 Akçam 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. 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 on 9 October 2001,

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

PROCEDURE

1. The case originated in an application (no. 32964/96) 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 Cahit Akçam ("the applicant"), on 28 August 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 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 Tukey, 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. The President of the Chamber decided that in the interests of the proper administration of justice, the present application should be joined to other applications against the same respondent State raising the same

complaints (applications nos. 26480/95, 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, 32987/96, 32900/96, 33362/96, 33369/96, 33645/96, 34591/96, 34687/96, 39428/96 and 43362/96) (Rule 43 § 2).

7. By a decision of 31 August 1999, having obtained the parties' observations, the Court declared the application admissible.

8. 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

9. On 17 November 1980 police officers from the Ankara Security Directorate arrested the applicant on suspicion of membership of an illegal armed organisation, the Dev-Yol (Revolutionary Way).

10. On 20 February 1981 the Ankara Martial Law Court (*sıkıyönetim mahkemesi*) ordered the applicant's detention on remand.

B. Trial in the Ankara Martial Law Court

11. 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, *inter alia*, of membership of the Dev-Yol, whose object was to undermine the constitutional order and replace it with a Marxist-Leninist regime. The prosecution sought the death penalty under Article 146 § 1 of the Turkish Criminal Code.

12. On 14 December 1988 the Ankara Martial Law Court ordered the applicant's release pending trial.

13. In a judgment of 19 July 1989 the Martial Law Court convicted the applicant of membership of the Dev-Yol. It sentenced the applicant to 16 years' imprisonment under Article 168 § 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

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

15. 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 on 26 December 1994 the case file was transmitted to it.

16. On 27 December 1995 the Court of Cassation quashed the applicant's conviction on the ground that he should have been convicted of the offence under Article 146 § 1 of the Turkish Criminal Code. It referred the case to the Ankara Assize Court (*ağır ceza mahkemesi*). The criminal proceedings are still pending before the latter court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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."

18. 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

19. The applicant complained about the length of the criminal proceedings against him. He alleged 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..."

20. The Government refuted the applicant's allegations. They argued that the case was complex on account of the nature of the charges the applicant faced and the need to organise a large-scale trial involving 723 defendants, including the applicant, all of whose involvement in Dev-Yol activities had to be established. They averred that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

A. Period to be taken into consideration

21. The Court notes that the proceedings began on 17 November 1980, the date of the applicant's arrest, and are still pending before the Ankara Assize Court. They have thus already lasted almost twenty years and ten months.

22. The Court's jurisdiction *ratione temporis* only permits it to consider the period of almost fourteen years and eight months that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition (see *Cankoçak v. Turkey* (Sect. 1), nos. 25182/94 and 26956/95, judgment of 20 February 2001, § 26). It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (*ibid*., § 25). On the critical date the proceedings had already lasted six years and two months.

B. Reasonableness of the length of proceedings

23. The Court observes that the Martial Law Court took almost eight years and eight months to reach a verdict. 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 one year after it had been seized of the case. Subsequent to the latter judgment the case was referred to the Ankara Assize Court (*ağır ceza mahkemesi*), where the criminal proceedings are still pending, and they have already lasted almost five years and nine months before that court. The Court considers that both at first instance and in the appeal proceedings there were substantial delays, which cannot be explained in terms of the admitted complexity of the case and must be considered attributable to the national authorities.

24. Having regard to all the evidence before it and to its case-law on the subject (see *Şahiner v. Turkey* (Sect. 1), no. 29279/95, judgment of 4 September 2001, to be published in ECHR 2001-...), the Court holds that the length of the proceedings in issue did not satisfy the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. 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 his suffering as a result of the excessive length of the proceedings against him.

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

29. 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

30. The applicant did not specify his claim for reimbursement of legal costs and expenses incurred. He left the matter to be assessed by the Court.

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

32. The applicant clearly incurred some expenses in the Convention proceedings. The Court considers it reasonable to award the applicant FRF 10,000 by way of reimbursement of his costs and expenses.

C. Default interest

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

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;

3. *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, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
      (i) 100,000 (one hundred thousand) French francs in respect of non-pecuniary damage;
      (ii) 10,000 (ten thousand) French francs in respect of costs and expenses, together with any tax that may be chargeable;
   (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 30 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President