



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

SECOND SECTION

CASE OF RAMAZANOĞLU v. TURKEY

(Application no. 39810/98)

JUDGMENT

STRASBOURG

10 June 2003

FINAL

10/09/2003

*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 Ramazanoğlu v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEK,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN
Mr M. UGREKHEDIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 10 September 2002 and on 20 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 39810/98) 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 Ramazanoğlu (“the applicant”), on 16 December 1997.

2. The applicant was represented by Mrs Oya Ersoy Ataman, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that his right to a fair hearing was breached because the criminal proceedings brought against him were not concluded within a reasonable time within the meaning of Article 6 § 1 of the Convention.

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 Second 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.

6. By a decision of 10 September 2002 the Court declared the application admissible in so far as it had been communicated to the Government.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

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. The applicant was born in 1956 and lives in Istanbul.

10. On 15 September 1981 police officers from the Ankara Security Directorate arrested the applicant at his mother's house in the Safranbolu district of Zonguldak on suspicion of membership of an illegal organisation, the Dev-Yol (Revolutionary Way). He was placed in custody at the Ankara Security Directorate. The applicant stated during his questioning that he had hidden ammunition belonging to the organisation in the chimney of his mother's house. A search was conducted of the house and a large number of weapons and bullets, including a Kalashnikov automatic rifle and dynamite, were recovered.

11. On 27 October 1981 the applicant was brought before the Military Court judge who ordered his detention on remand.

B. Trial in the Ankara Martial Law Court

12. On 26 February 1982 the public prosecutor at the Ankara Martial Law Court, whose jurisdiction covered Ankara, Çankırı and Kastamonu provinces, indicted the applicant together with 723 others. The charges against the defendants included membership of Dev-Yol, an organisation which aimed to replace the constitutional order with a Marxist-Leninist regime contrary to Article 146 of the Turkish Criminal Code. The applicant was further charged with robbery, bombing and armed attacks against persons, and opening fire on three houses.

13. On 11 November 1987, having spent more than six years in prison, the applicant was released pending trial.

14. After martial law was lifted, the Ankara Martial Law Court was subsequently designated as the Martial Law Court attached to the 4th Army Corps.

15. On 19 July 1994 the Martial Law Court found the applicant guilty of the aforementioned offences. It was also established that the ammunition found in the house of the applicant's mother had been used in various illegal activities. The applicant was convicted of an offence under Article 146 § 3 of the Turkish Criminal Code. The applicant appealed to the Military Court of Cassation (*Askeri Yargıtay*).

C. Proceedings on appeal

16. On 26 December 1994 following the promulgation of Law no. 3953 of 27 December 1993 which abolished the jurisdiction of the Martial Courts, the case-file was transferred from the Military Court of Cassation to the Criminal Division of the Court of Cassation (*Yargıtay Ceza Dairesi*).

17. On 27 December 1995 the Court of Cassation quashed the judgment of the first instance court and sent the case-file to the Ankara Assize Court so that the applicant could be sentenced under Article 146 § 1 of the Turkish Criminal Code which prescribed capital punishment for the category of offence of which the applicant was convicted.

18. On 16 July 2002 the Ankara Assize Court found the applicant guilty under Article 146 § 1 of the Turkish Criminal Code and sentenced him to death. This sentence was commuted to a life sentence. The applicant's appeal against this judgment is at present pending before the Court of Cassation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Article 146 § 1 of the Criminal Code provides:

“Whosoever shall attempt to alter or amend in whole or in part the Constitution of the Republic of Turkey 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.”

THE LAW

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

20. 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...”

21. The Government rejected the allegation. 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. The participation of all these defendants 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. They further pointed out that, pursuant to former Article 25 of the Convention, Turkey has recognised the Court's jurisdiction only in respect of facts or events that have occurred since 22 January 1990.

A. Period to be taken into consideration

22. The Court notes that the proceedings began on 15 September 1981, the date of the applicant's arrest, and are still pending before the Court of Cassation. They have, therefore, been continuing for over twenty one and a half years.

23. The Court's jurisdiction *ratione temporis* only permits it to consider the period of just over sixteen years that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights (see *Cankocak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001, unreported). It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (*ibid.*, § 25). On that critical date the proceedings had already lasted five years, four months and thirteen days.

B. Reasonableness of the length of proceedings

24. The Court considers that both at first instance and in the appeal proceedings, and finally in the second trial before the Ankara Assize Court, there were substantial delays. It can accept that the case mounted against the applicant and the large number of other defendants was complex. That being said, it cannot but note that the proceedings have already lasted more than twenty one and a half years of which just over sixteen years are within the scope of the Court's consideration (see paragraph 23 above). This is an excessively long period which cannot be justified with reference to considerations of complexity. Furthermore, the respondent Government have not sought to attribute any of the delay to the applicant's conduct in the case. In the Court's opinion the length of the proceedings can only be explained by the failure of the domestic courts to deal with the case diligently (see the above-mentioned *Cankocak* judgment, § 32).

25. The Court observes in this connection that it took the Martial Law Court twelve years, four months and twenty one days to reach a verdict on 19 July 1994. Although the appeal proceedings before the Military Court of

Cassation and the Criminal Division of the Court of Cassation only took a year and five months, subsequently it took the Ankara Assize Court more than six and a half years to conclude its examination of the case. The case is still pending before the Court of Cassation. No convincing justification for these excessive delays has been offered by the respondent Government.

26. Having regard to all the evidence before it and to its case-law on the subject (see the above-mentioned *Cankoçak* judgment, § 33 and also *Şahiner v. Turkey*, judgment of 4 September 2001, *Reports of Judgments and Decisions* 2000-IX), the Court holds that the length of the proceedings in issue did not satisfy the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 24,560 euros (“EUR”) for pecuniary damage with respect to his loss of earnings during the time he spent in prison. He also claimed EUR 25,000 for non-pecuniary damage in respect of the uncertainty he has been enduring for the last twenty one years.

30. The Government submitted that the applicant had not submitted any evidence in support of his alleged pecuniary or non-pecuniary loss. They also submitted that the Court should only award an equitable amount of compensation to the applicant, without allowing the compensation procedure to be exploited. It should take as its point of reference the amounts awarded by the Court in similar applications. In this connection, the Government referred to the Court’s judgments in the cases of *Metinoğlu v. Turkey* (no. 29700/96, § 32, 7 February 2002, unreported), *Özcan v. Turkey* (no. 29701/96, § 32, 7 February 2002, unreported) and finally *Zülal v. Turkey* (no. 29703/96, § 33, 7 February 2002, unreported), and pointed out that the criminal proceedings brought against the applicants in those cases, like the proceedings in the present application, had been continuing for periods between twenty one and twenty three years. In those cases, the Court had awarded the applicants EUR 15,250 in respect of non-pecuniary damage.

31. The Court reiterates that it can only award reparation in respect of its finding that there has been a violation of the Convention as regards the unreasonable length of the criminal proceedings and make its calculation accordingly. Further, it considers that the applicant should be awarded some compensation for non-pecuniary damage since he must have suffered distress and anxiety due to the uncertainty created by the excessive length of the criminal proceedings. Deciding on an equitable basis and in line with its case-law, the Court therefore awards him the sum of EUR 15,250.

B. Costs and expenses

32. The applicant claimed EUR 2,015 in legal costs and expenses. This amount included the legal fees of the applicant's lawyer for 25 hours' of legal work (EUR 1,825), costs of the translation of 23 pages of documents received from the Court (EUR 140) and finally administrative costs and expenses such as telephone, postage and photocopying (EUR 50). The applicant submitted receipts for his postal expenses.

33. The Government submitted that no receipts or invoices were produced by the applicant in support of his claims for costs and expenses. They referred once again to the above-mentioned *Metinoğlu*, *Özcan* and *Zülal* cases in which the Court awarded each applicant EUR 1,200 for costs and expenses.

34. The Court notes that the applicants in the cases referred to by the Government had not submitted to the Court specific amounts for reimbursement of legal costs and expenses incurred and had left the amounts to be assessed by the Court. In the instant case, the applicant submitted the breakdown of the 25 hours of legal work carried out by his lawyer. Admittedly, other than the receipts of his postal expenses, the applicant did not submit any invoices or receipts for the translation work or for administrative costs. Having regard to the amounts claimed by the applicant in respect of these costs, the Court considers that they are not excessive. It also observes that the Government, other than submitting that there were no receipts, did not contend that the legal fees claimed by the applicant are excessive.

35. The Court therefore awards the applicant the sum of EUR 2,015, exclusive of any value-added tax that may be chargeable.

C. Default interest

36. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
 - i) EUR 15,250 (fifteen thousand two hundred and fifty euros) in respect of non-pecuniary damage;
 - ii) EUR 2,015 (two thousand and fifteen euros) in respect of costs and expenses, together with any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President