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

FIRST SECTION

CASE OF YALMAN AND OTHERS v. TURKEY

(Application no. 36110/97)

JUDGMENT

STRASBOURG

3 June 2004

FINAL

03/09/2004

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 Yalman and Others v. Turkey,

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

Mr P. LORENZEN, *President*,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 May 2003 and on 13 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 36110/97) 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 four Turkish nationals, Mr Galip Yalman, Mr Bahattin Sarısoy, Mr Osman Çağlayan and Mr Yusuf Çamca ("the applicants"), on 29 November 1996.

2. The applicants were represented by Mr S. Esmer, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicants alleged that their case, which commenced in 1989 and terminated in 1996, was not heard within a reasonable time as required by 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. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. By a decision of 15 May 2003, the Court declared the application admissible.

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

THE FACTS

9. In September 1980 the applicants were taken into police custody and were subsequently placed in detention on remand on suspicion of membership of an illegal organisation. The Erzincan Military Public Prosecutor filed a bill of indictment with the Erzincan Martial Law Court *(sıkıyönetim askeri mahkemesi)* charging the applicants under Article 146 of the Criminal Code with membership of an illegal organisation whose object was to undermine the constitutional order.

10. On various dates between 1982 and 1984 the applicants were released pending trial.

11. On 13 September 1988 the Erzincan Martial Law Court acquitted the applicants of the charges against them.

12. On various dates in March, April and June 1989 the applicants brought individual actions before the Sinop Assize Court against the Treasury, pursuant to Law no. 466. They requested compensation for their unjustified detention on remand.

13. On 20 October 1989 the court decided to join the applicants' cases.

14. On 15 December 1993 the Sinop Assize Court awarded non-pecuniary compensation to the applicants. The applicants appealed, arguing that the amount of compensation awarded was not sufficient.

15. On 31 January 1995 the Court of Cassation quashed the judgment of the first instance court.

16. On 6 June 1995 the Sinop Assize Court increased the amount of non-pecuniary compensation.

17. On 15 June 1995 the applicants again appealed.

18. On 30 May 1996 the Court of Cassation dismissed the applicants' appeal and upheld the judgment of the assize court.

THE LAW

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

19. The applicants complained that the proceedings on compensation had not been concluded within a reasonable time as required by Article 6 § 1 of the Convention as they had lasted almost seven years. The relevant parts of Article 6 provide as follows:

> "1. In the determination of his civil rights and obligations..., everyone is entitled to a... hearing within a reasonable time by [a] tribunal established by law..."

20. The Court notes that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable length" requirement laid down by Article 6 § 1 began on 2 and 6 March 1989 for Mr Bahattin Sarısoy and Mr Osman Çağlayan respectively, on 10 April 1989 for Mr Yusuf Çamça and on 1 June 1989 for Mr Galip Yalman. They ended on 30 May 1996 when the Court of Cassation dismissed the applicants' second appeal. The period under consideration thus lasted approximately seven years.

21. The Government submitted that in order to decide on the compensation issue the Sinop Assize Court had to request the case files from the courts which had decided on the applicants' detention on remand. They further maintained that the applicants' case had involved several appeal stages. They referred in this connection to the case-law of the Court which establishes that the reasonableness of the length of proceedings depends, among other things, on the particular circumstances of the case (*Konig v. Germany*, judgment of 28 June 1978, Series A no. 27, § 99, and *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 139, § 59). They concluded that bearing in mind the number of documents which had to be requested from other courts and the several appeal stages involved, the length of the proceedings had not been excessive.

22. The applicants contended that the need to obtain evidence from other courts was not sufficient to justify the length of the proceedings. They maintained that requesting documents or case-files from other courts was a common occurrence in court proceedings. If this procedure caused a delay in the proceedings, it had to be concluded that there had been a serious problem in the trial system.

23. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among others, *Sekin and Others v. Turkey*, no. 26518/95, § 35,

22 January 2004, and *Kranz v. Poland*, no. 6214/02, § 33, 17 February 2004).

24. The Court considers that the subject matter of the litigation, namely the determination of the amount of compensation to be paid to the applicants for their unjustified detention on remand, was not particularly complex. It further notes that the cases concerning compensation claims brought under Law no. 466 are examined by the competent courts by way of a written procedure.

25. As regards the conduct of the applicants, the Court observes that it does not appear that they significantly contributed to the prolongation of the proceedings.

26. As to the conduct of the authorities, the Court observes that the first instance court took more than four years to render its judgment and that this delay has not been satisfactorily explained by the Government. Their argument concerning the number of documents which had to be requested from other courts is not sufficient to explain the delay in question. The Court reiterates in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see, among other authorities, *Pélissier and Sassi v. France*, judgment of 25 March 1999, *Reports of Judgments and Decisions* 1999-II, § 74). The Court further considers that the delay in the appeal proceedings is also attributable to the national authorities in the light of the above-cited principle.

27. In the light of the criteria laid down in its case-law and taking into account the overall duration of the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

28. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants claimed a total of 10,000 euros (EUR) for pecuniary damage. They alleged that if the non-pecuniary compensation was paid at an earlier stage than 1996 they would not have a loss due to inflation. This sum also included the applicants' loss of income throughout the duration of the proceedings.

31. The Government contested the applicants' claims. They submitted that the amounts claimed by the applicants were excessive.

32. The Court considers that there is no causal link between the pecuniary damage claimed before the Court and the violation found. The Court notes in this connection that the compensation awarded was of non-pecuniary nature and that the amount awarded was within the discretion of the domestic court. Moreover, it is not for the Court to speculate on what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 (see *Werner v. Austria,* judgment of 24 November 1997, *Reports* 1997-VII, p. 2514, § 72). Consequently, no award is made under this head.

33. The applicants further claimed a total of EUR 50,000 for non-pecuniary damage.

34. The Government submitted that a finding of a violation would constitute sufficient reparation.

35. The Court accepts that the applicants suffered non-pecuniary damage such as distress and frustration on account of the duration of the proceedings, which cannot be sufficiently compensated by finding of a violation. Taking into account the circumstances of the case and having regard to its jurisprudence (see *Sekin and Others* cited above, § 45), the Court awards the applicants a total sum of EUR 5,000.

B. Costs and expenses

36. The applicants claimed a total of EUR 3,100 for costs and expenses incurred in the proceedings before the domestic authorities and before the Strasbourg institutions.

37. The Government did not make any submission on this claim.

38. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court considers it reasonable to award the applicants the sum of EUR 2,500 in respect of costs and expenses.

C. Default interest

39. 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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage to be converted into Turkish liras at the rate applicable at the date of settlement;
      (ii) EUR 2,500 (two thousand and five hundred euros) in respect of costs and expenses to be converted into Turkish liras at the rate applicable at the date of settlement;
      (iii) any tax that may be chargeable on the above amounts;
   (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Peer LORENZEN
President