



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

SECOND SECTION

CASE OF AHMET KOÇ v. TURKEY

(Application no. 32580/96)

JUDGMENT

STRASBOURG

22 June 2004

FINAL

22/09/2004

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 Ahmet Koç 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 L. LOUCAIDES,

Mr R. TÜRMEŒ,

Mr C. BİRSAN,

Mr K. JUNGWIERT

Mr M. UGREKHELIDZE, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 23 September 2003 and on 1 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 32580/96) 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 Ahmet Koç (“the applicant”), on 6 June 1996.

2. The applicant was represented by Mr M. Bektaş, 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 applicant alleged, in particular, that the criminal proceedings brought against him had not been concluded within a “reasonable time”. He further submitted that his right to a fair hearing had been breached because of his conviction by the Ankara Martial Law Court, which lacked independence and impartiality. He finally contended that 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 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 Second Section (Rule 52 § 1).

7. By a decision of 23 September 2003, the Court declared the application partly admissible. It retained the applicant's complaints concerning his right to a fair hearing within a reasonable time by an independent and impartial tribunal and declared the remainder of his complaints inadmissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1953 and lives in Ankara.

10. On 17 February 1981 the applicant was arrested and placed in police custody by police officers from the Ankara Security Directorate. He was accused of membership of an illegal organisation, the *Dev-Yol* (Revolutionary Way). On 15 April 1981 the Ankara Martial Law Court (*sıkıyönetim mahkemesi*) ordered the applicant's detention on remand.

11. On 26 February 1982 the Military Public Prosecutor filed a bill of indictment with the Ankara Martial Law Court against the applicant and 722 other defendants. The prosecution requested that the applicant be convicted and sentenced pursuant to Article 168 § 2 of the Criminal Code on account of his membership of an illegal armed organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime, contrary to Articles 146 § 1 and 168 § 2 of the Criminal Code.

12. On 31 December 1983 the applicant was released pending trial.

13. On 11 November 1987 the court requested the public prosecutor to formulate his opinion on the charges. On 23 March 1988 the public prosecutor filed his opinion with the court.

14. On 19 July 1989 the Ankara Martial Law Court found the applicant guilty as charged and sentenced him to six years and eight months' imprisonment. The applicant was also permanently debarred from public service. The applicant appealed against the conviction and the case was referred to the Military Court of Cassation (*Askeri Yargıtay*).

15. Following the promulgation of Law no. 3953 of 27 December 1993, which abolished the jurisdiction of the martial law courts, the Court of

Cassation acquired jurisdiction over the case and the file was transmitted to it.

16. On 27 December 1995 the Court of Cassation revised the judgment of the first-instance court, sentenced the applicant to five years' imprisonment and debarred him from public service for three years.

17. On 23 May 1996 the applicant was dismissed from his post at the Ankara Municipality on account of his conviction.

18. On 11 December 1996 the applicant was permitted to return to his previous post and to work as the head of the research and planning department of the municipality.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. A description of the relevant domestic law and practice can be found in *Şahiner v. Turkey*, judgment of 4 September 2001, *Reports of Judgments and Decisions* 2001-IX.

20. Article 327 of the Code of Criminal Procedure lists the circumstances in which “a person convicted by a judgment that has become final may be granted a retrial”.

This provision was amended by section 3 of Law no. 4793, which added a sixth set of circumstances in which criminal proceedings could be re-opened:

“... where it has been held in a final judgment of the European Court of Human Rights that a decision in criminal proceedings was given in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms or its Protocols. In such cases, an application to re-open the proceedings may be lodged within one year of the date on which the judgment of the European Court of Human Rights became final.”

Law no. 4793 came into force on 3 February 2003. By provisional section 1 of the Law, section 3 is applicable in only two sets of circumstances: where the Court has delivered a judgment that became final before the Law came into force, and where the Court delivers a final judgment on an application lodged after the Law came into force.

THE LAW

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

1. Length of the proceedings

(a) The parties' submissions

21. The applicant complained that the criminal proceedings against him had not been concluded within a reasonable time as required by 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...”

22. The Government submitted that the case was complex, having regard to the charges the applicant faced and the need to organise a large-scale trial involving 723 defendants, including the applicant, whose activities and connections with the other defendants had to be established. They further averred that it had been extremely difficult to ascertain the role played by each of the defendants as most of them had been known only by their nicknames. The Government contended that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

(b) The Court's assessment

(i) Period to be taken into consideration

23. The Court notes that the proceedings began on 17 February 1981, 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 fourteen years and ten months.

24. The Court's jurisdiction *ratione temporis* only permits it to consider the period of just over 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 to the European Commission of Human Rights. It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (see *Şahiner*, cited above, § 22, and *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001). On that crucial date the proceedings had already lasted more than six years.

(ii) Reasonableness of the length of proceedings

25. The Court considers that there were substantial delays both at first instance and in the appeal proceedings. 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 lasted fourteen years and ten months of which almost nine years are within the scope of the Court's consideration. The length of this period is excessive and cannot be justified with reference to considerations of complexity alone. In the Court's opinion, the length of the proceedings can only be explained by the failure of the domestic court to deal with the case diligently (see, in this connection, the above-mentioned *Cankoçak* and *Şahiner* judgments at §§ 32 and 27 respectively).

26. Having regard to all the evidence before it and to its case-law on the subject (see the above-cited *Cankoçak* and *Şahiner* judgments at §§ 33 and 30 respectively), the Court finds that the length of the proceedings at issue did not satisfy the "reasonable time" requirement.

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

2. Independence and impartiality of the Ankara Martial Law Court

(a) The parties' submissions

28. The applicant complained under Article 6 § 1 of the Convention that he was denied a fair hearing as he was tried and convicted by the Ankara Martial Law Court which lacked independence and impartiality on account of the presence of two military judges and one army officer on the bench. Article 6 § 1 of the Convention provides, as relevant:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

29. The respondent Government submitted that the martial law courts had been established in accordance with the Constitution. They further averred that the guarantees laid down in Article 6 of the Convention had been provided for in the proceedings before martial law courts by virtue of the Constitution.

(b) The Court's assessment

30. The Court notes that it has already examined similar grievances in the past and has found a violation of Article 6 § 1 (see, among many other authorities, *Şahiner*, cited above, § 47, and *Alfathi and Others v. Turkey (as regards the applicant Mahmut Memduh Uyan) v. Turkey*, no. 32984/96, § 46, 30 October 2003).

31. The Court sees no reason to reach a different conclusion in the instant case. It is understandable that the applicant, who was prosecuted in a

martial law court on charges of attempting to undermine the constitutional order of the State, should have been apprehensive about being tried by a bench that included two military judges and an army officer acting under the authority of the martial-law commander. On that account, the applicant could legitimately fear that the Ankara Martial Law Court might allow itself to be influenced unduly by considerations that had nothing to do with the nature of the case. The fact that two civilian judges, whose independence and impartiality are not in doubt, sat in that court makes no difference in this respect. In other words, the applicant's fears as to the Ankara Martial Law Court's lack of independence and impartiality can be regarded as objectively justified (see *Şahiner*, cited above, § 47).

32. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant sought reparation for the damage he had sustained but left the amount of the award to the discretion of the Court.

35. The Government submitted that the applicant had not provided any evidence in support of any alleged pecuniary damage and requested the Court not to accede to the applicant's claims. Should the Court deem it necessary to award the applicant compensation, they invited it to award him an equitable amount so as not to allow the compensation procedure to be exploited by the submission of unsubstantiated and undocumented claims.

As regards non-pecuniary damage, the Government contended that if the Court were to find a violation, that finding in itself should constitute sufficient compensation.

36. The Court considers that its finding of a violation in respect of the applicant's and conviction by a tribunal which lacked independence and impartiality constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Şahiner*, cited above, § 50, and *Incal v. Turkey*, Reports 1998-VII, p. 1575, § 82).

37. As to the unreasonable length of the proceedings, the Court considers that the applicant must have suffered a certain amount of distress.

Taking into account the circumstances of the case, it awards the applicant a total sum of 12,000 euros (EUR).

B. Costs and expenses

38. The applicant did not submit any receipts or invoices indicating the costs and expenses that he had incurred. He left it to the Court to assess the appropriate amount.

39. The Government pointed out that the applicant had not produced any receipts or documents in support of his claim.

40. Deciding on an equitable basis and having regard to the criteria laid down in its case-law (see, among other authorities, the above-mentioned judgments of *Şahiner* and *Alfatlı and Others (as regards the applicant Mahmut Memduh Uyan)*, at §§ 55 respectively), the Court considers it reasonable to award the applicant EUR 2,000 under this head.

C. Default interest

41. 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 on account of the length of the criminal proceedings;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's trial by the Ankara Martial Law Court, which lacked independence and impartiality;
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, together with any tax that may be applicable, to be converted into Turkish liras at the rate applicable on the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 22 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President