



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

THIRD SECTION

CASE OF AKSAÇ v. TURKEY

(Application no. 41956/98)

JUDGMENT

STRASBOURG

15 July 2004

FINAL

15/10/2004

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 Aksaç v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŒ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 15 January and 24 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 41956/98) 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 Yavuz Aksaç (“the applicant”), on 6 January 1998.

2. The applicant, who had been granted legal aid, was represented by Mr H. Erdoğan and Mr L. Kanat, lawyers 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 under Article 6 § 1 of the Convention that he had been denied a fair hearing on account of the presence of a military judge on the bench of the Ankara State Security Court which tried and convicted him. He further complained under Article 6 § 3 (b) that the written opinion of the chief public prosecutor at the Court of Cassation had never been served on him, thus depriving him of the opportunity to put forward his counter-arguments. He finally contended that he had been convicted merely on account of his association with a left-wing magazine, in violation of his rights under Articles 9 and 10.

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 January 2004 the Court declared the application partly admissible. It retained the applicant's complaints concerning his right to a fair hearing by an independent and impartial tribunal and his right to have adequate time and facilities for the preparation of his defence and declared the remainder of the application inadmissible.

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

9. On 24 May 2004 the case was assigned to the Third Section of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1971 and lives in Ankara.

11. On 23 March 1995 the applicant was arrested and placed in police custody by police officers from the Ankara Security Directorate. He was accused of aiding and abetting an illegal organisation, the DHKP-C (Revolutionary People's Liberation Party-Front).

12. On 6 April 1995 the public prosecutor attached to the Ankara State Security Court filed an indictment with the latter charging the applicant, under Articles 168 § 2 and 169 of the Criminal Code and Article 5 of the Prevention of Terrorism Act, with membership of an illegal organisation.

13. On 10 April 1996 the Ankara State Security Court found the applicant guilty of aiding and abetting an illegal organisation, the DHKP-C, and sentenced him to three years and nine months' imprisonment and debarred him from public service for three years.

14. The applicant appealed. On 11 June 1997 the chief public prosecutor at the Court of Cassation submitted his written opinion (*tebliğname*) on the merits of the appeal to the Court of Cassation. The chief public prosecutor proposed that the first instance court's judgment be upheld. The written opinion of the chief public prosecutor was read out during the hearing before the Court of Cassation.

15. On 10 July 1997 the Court of Cassation dismissed the applicant's appeal upholding the Ankara State Security Court's judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law at the material time may be found in *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV; *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII; *Özel v. Turkey*, no. 42739/98, 7 November 2002, and *Gençel v. Turkey*, no. 53431/99, 23 October 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complains under Article 6 § 1 of the Convention that he was denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Ankara State Security Court which tried and convicted him. He further complains under Article 6 § 3 (b) that the written observation of the chief public prosecutor at the Court of Cassation on the merits of his appeal was not served on him.

18. As to the applicant's complaint concerning the composition of the Ankara State Security Court, the Court notes that it has examined similar grievances in the past and has found a violation of Article 6 § 1 (see, among many other authorities, *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

19. The Court sees no reason to reach a different conclusion in the instant case. It is reasonable that the applicant who was prosecuted in a State Security Court for membership of an illegal organisation should have been apprehensive about being tried by a bench which included a regular army officer and member of the Military Legal Service. On that account, he could legitimately fear that the Ankara State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to the State Security Court's lack of independence and impartiality can be regarded as objectively justified (see *Incal*, cited above, p. 1573, § 72 *in fine*).

20. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

21. Having regard to its finding that the applicant's right to fair hearing by an independent and impartial tribunal has been infringed, the Court

considers that it is unnecessary to examine the applicant's complaint under Article 6 § 3 (b) (see *Çıraklar*, cited above, § 45).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed a total of 20,000 euros (EUR) for pecuniary and non-pecuniary damage.

24. The Government contested the applicant's claim. They maintained that the sums claimed were excessive and unjustified.

25. Regarding the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of the proceedings before the State Security Court might have been had the violation of the Convention not occurred (see *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, § 85). Moreover, the applicant's claim in respect of pecuniary damage has not been substantiated by any evidence whatsoever. It therefore makes no award under this head.

26. With regard to non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Çıraklar*, cited above, § 49).

27. Where the Court finds that an applicant has been convicted by a tribunal which is not independent and impartial within the meaning of Article 6 § 1, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant is granted in due course a retrial by an independent and impartial tribunal (see *Gençel*, cited above, § 27).

B. Costs and expenses

28. The applicant claimed a total of EUR 5,500 for costs and expenses incurred in the proceedings before the domestic authorities and before the Strasbourg institutions.

29. The Government contested the applicant's claim. They submitted that the claim in respect of costs and expenses had not been duly documented.

30. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

31. Making its own estimate based on the information available and having regard to the criteria laid down in its case-law (see, among other authorities, *Uzunhasanoğlu v. Turkey*, no. 35070/97, § 33, 20 April 2004), the Court considers it reasonable to award the applicant EUR 3,000 under this head less the sum of EUR 630 received in legal aid from the Council of Europe.

C. Default interest

32. 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 as regards the complaint relating to the independence and impartiality of the Ankara State Security Court;
2. *Holds* that it is not necessary to consider the applicant's complaint under Article 6 § 3 (b) of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *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, EUR 3,000 (three thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, less EUR 630 (six hundred thirty euros) granted by way of legal aid, plus 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President