



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

SECOND SECTION

CASE OF PARSIL v. TURKEY

(Application no. 39465/98)

JUDGMENT

STRASBOURG

26 April 2005

FINAL

26/07/2005

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 Parsıl 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. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 2 September 2004 and 31 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 39465/98) 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 Adem Parsıl (“the applicant”), on 28 August 1997.

2. The applicant was represented by Mr M.A. Erol, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained under Article 6 of the Convention that the written opinion of the principal 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.

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 Third 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 2 September 2004, the Court declared the application admissible.

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

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1963 and lives in Kahramanmaraş. He was a civil servant at the time of the events giving rise to the application.

10. In 1990 the applicant was appointed to the Ölüdeniz Natural Park as a warden in charge of the sale of entry tickets.

11. On 29 July 1991 he was detained for selling tickets which had been fraudulently issued and crediting money to his account. In his police statement dated 29 July 1991 and in his statement to the public prosecutor on 30 July 1991, the applicant confessed that he had been involved in selling forged tickets together with two other persons.

12. On 30 July 1991 the Fethiye Magistrates' Court ordered the applicant's detention on remand.

13. On 20 August 1991 the Fethiye public prosecutor filed an indictment with the Fethiye Assize Court, charging the applicant with embezzlement under Article 202 of the Criminal Code.

14. On 18 September 1991 the Fethiye Assize Court held its first hearing. Subsequently, the public prosecutor maintained that, as the applicant's acts might constitute a breach of Article 342 of the Criminal Code regulating the offence of forgery, permission to prosecute was required from the local authority, pursuant to the Act on the Procedure for the Prosecution of Civil Servants.

15. On 30 December 1991 the first-instance court transferred the case file to the Fethiye District Council for investigation and ordered the suspension of the proceedings pending the decision of the District Council. It further ordered the applicant's release from detention.

16. On 16 December 1992 the Fethiye District Governor decided that the applicant could be tried before the Fethiye Assize Court on account of the nature of the charges against him.

17. On 22 May 1993 the case file was remitted to the Fethiye Assize Court.

18. On 22 December 1993 the court found the applicant guilty of forgery under Article 342 of the Criminal Code and sentenced him to one year, eleven months and ten days' imprisonment.

19. On 6 December 1994 the Court of Cassation quashed the decision of the first-instance court on procedural grounds.

20. On 8 March 1995 the Fethiye Assize Court amended the procedural errors in its former judgment and handed down the same sentence against the applicant. The applicant appealed.

21. On 11 December 1995 the Court of Cassation, referring to the opinion of the principal public prosecutor dated 20 November 1995, which had not been communicated to the applicant, ruled that the first-instance court had failed to apply the legal provisions relevant to the crime in question. Consequently, it quashed the judgment of the Fethiye Assize Court and stated that the applicant's acts, which amounted to embezzlement under Turkish law, should have been examined under Article 202 of the Criminal Code.

22. The case was subsequently remitted to the Fethiye Assize Court. In his defence submissions before the latter, the applicant denied that his acts constituted a breach of Article 202 of the Criminal Code and requested the court to abide by its judgment of 8 March 1995.

23. On 13 March 1996 the Fethiye Assize Court found the applicant guilty of embezzlement under Article 202 of the Criminal Code. It sentenced the applicant to seven years, nine months and ten days' imprisonment and to a fine of 33,333,333 Turkish liras (TRL) (390 euros (EUR)). The applicant was also debarred from working in the civil service.

24. On 6 March 1997 the Court of Cassation upheld the judgment of the Fethiye Assize Court.

II. RELEVANT DOMESTIC LAW

25. A description of the relevant domestic law at the material time can be found in *Göç v. Turkey* ([GC], no. 36590/97, § 34, ECHR 2002-V).

THE LAW

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

26. The applicant complains under Article 6 § 1 of the Convention that the written observations of the principal public prosecutor at the Court of Cassation on the merits of his appeal were not served on him, thus depriving him of the opportunity to put forward his counter-arguments. The relevant part of Article 6 § 1 of the Convention provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

27. The applicant contends that neither he nor his lawyer was informed of the opinion the principal public prosecutor submitted to the Court of Cassation. Accordingly, he did not have the opportunity to respond to the prosecutor’s opinion and to present his own arguments. Therefore, his rights to procedural equality and his rights of defence were breached, with the result that he had an unfair trial.

28. The Government submit that, following the referral of the case to the Court of Cassation, it would have been open to any party to the proceedings to obtain from the court’s registry any information regarding the state of proceedings. When the applicant became aware of the advisory opinion of the principal public prosecutor, he could have asked for all necessary information, filed additional observations or responded to the prosecutor’s opinion. The Government further maintain that the principal public prosecutor’s opinion is not binding on the Court of Cassation. Furthermore, the principal public prosecutor, as a general rule, is not entitled to take part in the cassation proceedings. They finally aver that the submissions of the principal public prosecutor did not contain any new element of which the applicant was not aware.

29. The Court notes that it has already examined the same grievance in the past and has found a violation of Article 6 § 1 of the Convention in its *Göç* judgment (cited above, § 58). In that judgment, the Court held that, having regard to the nature of the principal public prosecutor’s submissions and to the fact that the applicant was not given an opportunity to make written observations in reply, there had been an infringement of the applicant’s right to adversarial proceedings (*loc. cit.* § 55). It further considered that to require an applicant’s lawyer to take the initiative and inform himself periodically on whether any new elements have been included in the case file would amount to imposing a disproportionate burden on her or him and would not necessarily have guaranteed a real opportunity to comment on the opinion (*loc. cit.* § 57).

30. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned case.

31. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the non-communication to the applicant of the principal public prosecutor’s observations before the Court of Cassation.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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. Pecuniary damage

33. The applicant claimed the sum of TRL 100,000,000,000 (EUR 53,938) for pecuniary damage.

34. The Government contended that the applicant had failed to submit any evidence in support of his claims.

35. The Court notes that the applicant failed to substantiate that he suffered pecuniary damage as a result of the breach of his Convention rights. Therefore, it disallows the claim under this head.

B. Non-pecuniary damage

36. The applicant claimed the sum of EUR 50,000 for non-pecuniary damage.

37. The Government disputed the applicant's claim.

38. The Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

C. Costs and expenses

39. The applicant claimed a total of EUR 8,700 for his costs and expenses. He did not produce any supporting documents.

40. The Government submitted that the claims were excessive and unsubstantiated. They argued that no receipt or any other document had been produced by the applicant to prove his claims.

41. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant the sum of EUR 1,000 under this head.

D. Default interest

42. 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* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
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, EUR 1,000 (one 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, 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 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 26 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President