CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF MEHMET KAYA v. TURKEY

(Application no. 36150/02)

JUDGMENT

6 December 2005

STRASBOURG

FINAL

06/03/2006

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 Mehmet Kaya 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. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 November 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36150/02) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Mehmet Kaya on 3 September 2002.

2. The applicant was represented by Mr Türker Doğan, a lawyer practising in Adana. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 13 May 2004 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

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

5. 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

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in Istanbul.

7. On 12 September 1980 the applicant was arrested and taken into police custody on suspicion of having committed an armed attack and attempted murder.

8. On 17 October 1980 the Ankara Martial Law Court ordered the applicant's detention on remand.

9. On 13 April 1991 he was released pending trial.

10. On 25 December 1992 the Ankara Martial Court convicted the applicant of premeditated murder, pursuant to Article 450 § 4 of the Criminal Code, and sentenced him to life imprisonment.

11. On 12 May 1993 the Military Court of Cassation quashed the judgment of the Ankara Martial Law Court on the ground that the latter had misinterpreted the domestic law in respect of the offence in question and remitted the case to the court of first instance.

12. Subsequent to the promulgation of Law no. 3953 on 27 December 1993, which abolished the jurisdiction of the Martial Law Courts, the Ankara Assize Court acquired jurisdiction in the applicant's case.

13. In 1994 the Ankara Assize Court commenced the applicant's trial together with one hundred and thirty-two other accused.

14. On 21 November 2003 after numerous hearings had been conducted, Ankara Assize Court convicted the applicant of the aforementioned crime and sentenced him to thirty-six years' imprisonment under Article 59 of the Criminal Code.

15. On 7 May 2004 the Public Prosecutor before the Ankara Assize Court appealed to the Military Court of Cassation against this judgment.

16. The criminal proceedings against the applicant are currently pending before the Court of Cassation.

THE LAW

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

17. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

18. The Government contested that argument.

19. The Court notes that the proceedings began on 12 September 1980, when the applicant was arrested and taken into police custody, and are still pending before the Court of Cassation. They have, therefore, lasted over twenty-five years.

20. The Court's jurisdiction *ratione temporis* only permits it to consider the period of eighteen years and nine months that has 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 *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001, and *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX). On that crucial date the proceedings had already lasted more than six years.

A. Admissibility

21. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

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 one hundred and thirty-three defendants. They contended that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

23. The applicant contended that the criminal proceedings brought against him had already lasted twenty-five years and are still pending.

24. The Court considers that there were substantial delays both at first instance and in the appeal proceedings. It can accept that the case brought against the applicant and the large number of other defendants was complex. That being said, it notes that the proceedings have lasted twenty-five years, of which over eighteen fall within the Court's jurisdiction. 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 courts to deal with the case diligently (see, the *Cankoçak* and *Şahiner* judgments, cited above, §§ 32 and 27 respectively).

25. Having regard to all the evidence before it and to its case-law on the subject, the Court finds that the length of the proceedings at issue did not satisfy the "reasonable time" requirement.

26. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed an amount to be determined by the Court between 329,000 and 481,000 euros (EUR) in respect of pecuniary damage and EUR 500,000 in respect of non-pecuniary damage.

29. The Government contested the amounts requested by the applicant. They 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 non-pecuniary damage to the applicant, without allowing the compensation procedure to be exploited and that it should take as its point of reference the amounts awarded by the Court in similar applications.

30. As regards the pecuniary damage, the Court finds, on the evidence before it, that the applicant has failed to demonstrate that pecuniary damage was actually caused by the unreasonable length of the proceedings. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis, Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

31. However, the Court accepts that the applicant has experienced some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis and having regard to the criteria laid down in its case-law (see *Ahmet Koç v. Turkey*, no. 32580/96, § 37, 22 June 2004), the Court awards the applicant EUR 14,000 under this head.

B. Costs and expenses

32. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the domestic courts and the Court.

33. The Government maintained that only actually incurred expenses can be reimbursed. In this connection, they submitted that all costs and expenses must be documented by the applicant or his representative and that rough figures or rough lists cannot be considered as relevant and necessary documents to prove the expenditure.

34. The Court notes that the applicant, who was represented by a lawyer, did not have the benefit of legal aid. Deciding on an equitable basis and

having regard to the criteria laid down in its case-law (see, among other authorities, *Ahmet Koç*, cited above, § 40, *Çaloğlu v. Turkey*, no. 55812/00, § 33, 29 July 2004, and *Yanıkoğlu v. Turkey*, no. 46284/99, § 45, 14 October 2004), the Court considers it reasonable to award the applicant EUR 2,000 in respect of costs and expenses.

C. Default interest

35. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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 New Turkish liras at the rate applicable on the date of settlement:
      (i) EUR 14,000 (fourteen thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
      (iii) 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 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President