



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

FOURTH SECTION

CASE OF ATKIN v. TURKEY

(Application no. 39977/98)

JUDGMENT

STRASBOURG

21 February 2006

FINAL

21/05/2006

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 Atkin v. Turkey,

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

Mr J. CASADEVALL, *President*,

Mr R. TÜRMEŒ,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 31 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 39977/98) 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, Mehmet Atkin ("the applicant"), on 11 June 1997.

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

3. On 21 October 1998 the European Commission of Human Rights declared the application partly inadmissible and decided to communicate the applicant's complaint under Article 6 § 1 of the Convention relating to the length of the criminal proceedings.

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 Fourth 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. In a letter of 1 April 2003, the Court informed the parties that in accordance with Article 29 §§ 1 and 3 of the Convention it would decide on both the admissibility and merits of the application.

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 Fourth Section (Rule 52 § 1).

9. On 7 June 2005 the Court decided to invite the parties to submit further written observations on the admissibility and merits of the applicant's complaint 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.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1951 and lives in İstanbul.

11. At the time of the events giving rise to the application, the applicant worked as a customs broker in a private company.

12. On 28 December 1988 the applicant was questioned by a customs inspector in respect of his involvement in the smuggling of electronic goods.

13. On 7 March 1989 the customs inspector submitted his report and on 18 May 1989 the Edirne public prosecutor filed a petition with the Edirne Assize Court accusing the applicant and three other suspects of smuggling electronic goods. He requested that the applicant be convicted and sentenced under Articles 27 §§ 2, 3, 4 and 5 and 33 § 2 of Law no. 1918.

14. On 22 May 1989 the criminal proceedings initiated against the applicant and three other co-accused commenced before the Edirne Assize Court.

15. On 27 July 1989 the applicant was remanded in custody. He was released pending trial on 19 June 1990.

16. On an undetermined date, the Edirne public prosecutor submitted an additional indictment against six other suspects and the cases were joined.

17. On 10 September 1991 the Edirne Assize Court declared that it lacked competence *ratione materiae* to examine the case. The case-file was transferred to the İstanbul State Security Court.

18. On 18 November 1992, Article 9 of Law no. 2845 on the Establishment and the Rules of Procedure of the State Security Courts was amended to exclude organized smuggling offences within the competence of the State Security Courts. Accordingly, on 25 December 1992 the İstanbul State Security Court declared that it lacked competence *ratione materiae* to examine the case.

19. On 25 January 1993 the criminal proceedings before the Edirne Assize Court commenced. The applicant was tried together with nine other co-accused.

20. Between 25 January 1993 and 26 December 1995 the first-instance court held twenty-two hearings on regular intervals. During this period the court undertook various procedural decisions with a view to determining the addresses of the co-accused and obtaining their additional defence submissions by way of rogatory letters.

21. In a hearing held on 18 November 1993 the court noted that no reply had been received from the various authorities to its requests for information for the case-file. On 15 September 1994 the court observed that the documents from the German authorities in respect of the co-accused Mr K.Ç. had been translated and submitted to the case-file. It further noted that the Küçükçekmece Civil Court had not responded to its instruction to hear the co-accused Mr H.K. The court was informed that the public prosecutor's office was unable to determine the address of another co-accused Mr E.Ç. The court issued instructions to both the Küçükçekmece Civil Court and the public prosecutor's office with a view to completing the case-file.

22. On 23 February 1995 the additional defence submission of Mr H.K. was submitted to the court. The court noted that the public prosecutor's office had not responded to its request to determine the address of Mr E.Ç.

23. On 11 April 1995 the address of Mr E.Ç. was submitted to the court by the public prosecutor's office. It appeared that Mr E.Ç. was a civil servant working in the Sarp Customs. On 25 May 1995 the additional defence submission of Mr E.Ç., taken by Hopa Criminal Court of First Instance, was submitted to the case-file.

24. On 27 June 1995 the public prosecutor submitted his observations on the merits. The applicant requested time to submit his final defence submissions.

25. On 10 August 1995 the applicant read out his final defence submissions before the court.

26. On 26 December 1995 the Edirne Assize Court convicted the applicant on account of his involvement in organised smuggling and sentenced him to nine years' imprisonment and to a fine of 6,158,746,372 Turkish Liras (TRL).

27. On 25 December 1996 the Court of Cassation held a hearing and upheld the judgment of the first-instance court. The decision of the Court of Cassation was sent to the registry of the first-instance court on 31 January 1997.

28. On 7 February 1997 the applicant was released from prison.

29. On 21 May 1997 the principal public prosecutor at the Court of Cassation dismissed the applicant's request for the rectification of the Court of Cassation's decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

30. The applicant complained that the length of the criminal proceedings brought against him was excessive. He further complained in his application form, dated 7 January 1998, 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 applicant relied on Article 6 of the Convention, which in so far as relevant 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...”

A. Fairness of the criminal proceedings

31. The Government argued under Article 35 of the Convention that the applicant’s complaint concerning the non-communication of the written observations of the principal public prosecutor at the Court of Cassation must be rejected for failure to comply with the six-month rule. They maintained that the applicant should have lodged this complaint to the Court within six-months following the dismissal of his request for a rectification of the Court of Cassation’s decision whereas his complaint was introduced to the Court on 7 January 1998.

32. The applicant did not comment on this issue.

33. The Court notes that the “final decision” within the meaning of Article 35 § 1 of the Convention was the judgment of the Court of Cassation on 25 December 1996, dismissing the applicant’s appeal against the decision of the Edirne Assize Court. It observes that an application for rectification of a judgment does not constitute an effective remedy for the purposes of the Convention, unless it is successful and results in a re-opening (see, *Çıraklar v. Turkey* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII, pp. 3070-71, §§ 29-32).

34. The Court re-affirms its practice, in cases where the domestic law does not provide for the service of a written copy of a final domestic decision, that the six month period laid down in Article 35 § 1 begins to run from the date when the decision was finalised, i.e. when the parties were definitely able to be informed of its contents (see, among many others, *Seher Karataş v. Turkey*, no. 33179/96, § 27, 9 July 2002, and *Karatepe v. Turkey* (dec.), no. 43924/98, 3 April 2003). In the instant case, the judgment of the Court of Cassation was at the disposal of the applicant and

his lawyers as of 31 January 1997 when the judgment was sent to the registry of the first-instance court.

35. Although the applicant's first letter to the Court was dated 11 June 1997, his present complaint was only raised for the first time in his application form dated 7 January 1998. The Court reiterates that, when a new complaint is raised for the first time during the proceedings before the Court, the six month period is not interrupted until this complaint is actually lodged (see, *Sarl Aborcas and Borowik v. France* (dec.), no. 59423/00, 10 May 2005, and *Loyen v. France* (dec.), no. 46022/99, 27 April 2000).

36. In these circumstances, the Court accepts the Government's objection that the applicant has failed to comply with the six-month rule. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention as having been introduced out of time.

B. Length of the criminal proceedings

1. Admissibility

37. The Court notes that this part of 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.

2. Merits

38. There was no dispute over the period to be taken into consideration. It was common ground between the parties that the period to be taken into consideration began on 18 May 1989, when the Edirne public prosecutor filed a bill of indictment against the applicant and ended on 25 December 1996, when the Court of Cassation upheld the judgment of the first-instance court. The Court sees no reason to decide otherwise. The period under consideration thus lasted seven years and seven months before three instances.

39. The Government submitted that the case was complicated as it concerned the smuggling of electronic goods through customs. In this connection, they pointed out the organised nature of the crime and in particular the difficulty in determining the level of involvement of the different suspects. They stated that while some of the suspects were public officers, others worked in private companies and that one of them was a German national. They pointed out that the testimonies of the suspects had to be obtained through rogatory courts. The Government recalled that while Article 6 required that judicial proceedings be conducted promptly, it also laid emphasis on the more general principle of the proper administration of justice. The Government stated that the length of the proceedings could be

considered to have been prolonged due to the determination of the competent court to try the applicant. However, they pointed out that during the proceedings before the İstanbul State Security Court, Article 9 of the Law no. 2845 on the Establishment and the Rules of Procedure of the State Security Courts was amended and that State Security Courts were no longer competent to try offences under Law no. 1918.

40. The applicant disputed the Government's arguments. He stated that there were delays in between the hearings and that the proceedings could have been concluded in half the time since two separate investigation reports had been submitted to the court and that, therefore, the court did not spend time collecting evidence.

41. 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 following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

42. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

43. As regards the conduct of the applicant, the Court observes that it does not appear that he contributed to the prolongation of the proceedings. The Government have not argued to the contrary.

44. As to the conduct of the domestic authorities, the Court accepts the exceptional situation in which the national authorities found themselves following the amendment to Law no. 2845 which adversely affected the length of the proceedings for one year and three months. It also does not find that there were any excessive delays before the Court of Cassation. However, the Court cannot overlook the fact that a lengthy period - two years and three months - elapsed before the Edirne Assize Court declared that it lacked competence *ratione materiae* and transferred the case-file to the State Security Court on 10 September 1991 (see, paragraphs 13 and 17). The Government did not offer any explanation for this state of affairs. The Court further observes that an additional period of two years and eleven months elapsed before the Edirne Assize Court delivered a judgment on the merits since it was unable to secure the additional defence submissions of the co-accused and in particular that of a civil servant working at the customs (see, paragraphs 19 and 26). The Court finds that, in the instant case, the delay in securing testimonies of the accused must be considered to be attributable to the domestic court's handling of the proceedings.

45. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of considerable importance to him.

46. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 39,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

50. The Government contested these claims as being excessive.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered non-pecuniary damage, such as distress and frustration, on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case law, the Court awards the applicant EUR 3,600 under this head.

B. Costs and expenses

52. The applicant also claimed 25,000 German marks (DEM) (approximately EUR 12,782) for costs and expenses incurred before the domestic courts and EUR 5,000 for those incurred before the Court. He further claimed EUR 700 for translation and stationery and requested the reimbursement of expenses, i.e. transportation, incurred while he was attending the proceedings before the Edirne Assize Court. The applicant did not submit any receipt or invoice in respect of his above-mentioned costs and expenses.

53. The Government contested the amounts requested by the applicant.

54. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and

expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

55. 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 complaint concerning the length of the criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;
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 to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand and six hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President