



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

THIRD SECTION

CASE OF SERTKAYA v. TURKEY

(Application no. 77113/01)

JUDGMENT

STRASBOURG

22 June 2006

FINAL

22/09/2006

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 Sertkaya v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEŒ,
Mr C. BİRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 77113/01) 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, Abbas Sertkaya, on 28 July 2001.

2. The applicant was represented before the Court by Mr Orhan Tural, 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. On 11 December 2003 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government.

4. On 29 September 2005 the Court decided to apply Article 29 § 3 of the Convention and examine the admissibility and merits at the same time.

THE FACTS

5. The applicant, Mr Abbas Sertkaya, is a Turkish national, who was born in 1974 and lives in Muş. He is represented before the Court by Mr Orhan Tural, a lawyer practising in Istanbul.

6. On 12 July 1995 the Public Prosecutor at the Istanbul State Security Court filed an indictment accusing the applicant and four other suspects under Article 125 of the Criminal Code, of being involved in seven different instances of setting forests on fire for terrorism purposes, in Bursa in 1994.

7. On 19 July 1995 the Istanbul State Security Court held the first trial against the applicant and four other suspects.

8. On 6 February 1996 the Istanbul State Security Court ordered the applicant's detention on remand.

9. On 4 May 1996 the applicant was arrested and detained on remand.

10. On 27 February 1997 and 1 July 1997 the Istanbul State Security Court requested that the Bursa and Varto Criminal Courts obtain the statements of witnesses.

11. On 22 September 1997 and 11 November 1997 these statements were obtained and sent to the Istanbul State Security Court.

12. On 16 November 1999 the Public Prosecutor before the Istanbul State Security Court submitted his observations on the merits of the case. On the same day the applicant was released pending trial.

13. On 13 February 2001 the applicant was acquitted of all charges on account of lack of evidence.

14. On 21 February 2001 the decision became final in respect of the applicant.

THE LAW

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

15. 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..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 12 July 1995 and ended on 21 February 2001. It thus lasted five years and seven months at one level of jurisdiction.

A. Admissibility

18. The Court notes that the remainder 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.

B. Merits

19. 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 other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

20. The Court considers that there were substantial delays throughout the proceedings which lasted five years and seven months. It can accept that the case brought against the applicant and the five other defendants was complex. That being said, it notes that the length of the proceedings cannot be justified with reference to considerations of complexity alone. In the Court's opinion, this can only be explained by the failure of the domestic courts to deal with the case diligently. Having examined all the material submitted to it and 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.

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

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 200,000 US dollars (USD) in respect of pecuniary damage and USD 50,000 in respect of non-pecuniary damage.

24. The Government contested these claims arguing that his pecuniary claims had no causal link with his complaint.

25. The Court reiterates that it can only award reparation in respect of its finding that there has been a violation of the Convention as regards the unreasonable length of the proceedings. No causal link has been shown between the violation found under Article 6 and the pecuniary loss alleged. It therefore disallows the applicant's claim. However, it considers that the applicant should be awarded some compensation for non-pecuniary damage since he must have suffered distress and anxiety due to the uncertainty created by the excessive length of the proceedings. Deciding on an equitable basis and having regard to its case-law, the Court awards the applicant EUR 3,420 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant did not claim any separate amount in respect of the costs and expenses. He maintained that his costs and expenses during domestic proceedings and the proceedings before the Court are to be assessed together with pecuniary damage claim.

27. 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.

28. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant the sum of EUR 1,500 in respect of cost and expenses.

C. Default interest

29. 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 remainder of 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, the following amounts, within three months from the date on which the judgment becomes final, 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 3,420 (three thousand four hundred twenty euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred 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 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President