



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

THIRD SECTION

CASE OF M.A.T. v. TURKEY

(Application no. 63964/00)

JUDGMENT

STRASBOURG

19 October 2006

FINAL

19/01/2007

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 M.A.T. v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr R. TÜRMESEN,
Mr C. BİRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 63964/00) 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, M.A.T. (“the applicant”), on 13 June 2000.

2. The applicant was represented by Mr A. Koyuncu, a lawyer practising in Ankara.

3. On 7 September 2004 the Court (Fourth Section) declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

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

THE FACTS

5. The applicant was born in 1960 and lives in Istanbul.

6. On 2 March 1993 the Istanbul Public Prosecutor's Office filed an indictment against the applicant and seven other suspects for bribery and being an accessory to bribery in transactions concerning medical equipment supplied to various polyclinics. The prosecutor requested that the applicant be charged and convicted under Articles 80, 212 § 2 and 216 of the Criminal Code.

7. On 9 March 1993 the Istanbul Assize Court commenced the trial against the applicant and the other suspects. It held its first hearing on 13 April 1993, in which it heard statements from the suspects.

8. On 30 June 1993 the court decided to seek an expert opinion on the financial records and transactions of the relevant polyclinics. It requested a list of experts from the University of Istanbul. On 12 July 1993 it appointed 3 experts.

9. The trial resumed on 10 September 1993, shortly after the judicial recess. Upon the withdrawal of an expert, the court appointed a new one.

10. On 28 December 1993 the court decided to notify the experts about the time limits for the submission of their report. On 1 February 1994 the court notified the defendants that the experts had requested an extension of time. With no objections submitted, the court granted it.

11. On 10 May 1994 the report was submitted. The following day, the court held a hearing. The applicant's representative stated the he would submit his observations at a later date and the court granted a period time.

12. Shortly after the judicial recess, the court held a hearing in which it obtained the prosecutor's observations. The defendants were granted a further period of time for their defence submissions.

13. On 11 October 1994 the court acquitted the defendants for lack of evidence.

14. Upon the appeal by the Ministry of Health, however, the Court of Cassation quashed this ruling on 11 July 1995 in respect of the applicant and five other suspects.

15. On 6 October 1995 the Istanbul Assize Court recommenced the trial. The applicant's representative requested an extension of time, which the court granted. Since the applicant and some of the co-defendants did not attend, the court summoned them for the next hearing and postponed the proceedings.

16. On 16 January 1996 the court took the statement of one of the defendants who had not attended an earlier hearing.

17. At the hearing dated 9 April 1996, the applicant's representative submitted a petition requesting the court to expand the scope of its factual examination. Among his specific requests was the ordering of a new expert report. In addition, a co-defendant requested a rectification review of the Court of Cassation's decision.

18. The court denied these requests, holding that they were unwarranted under the circumstances and could only be intended to prolong the proceedings. Nonetheless, it granted the motion for a new expert examination restricted to the amounts of bribery and the transactional connections among the defendants.

19. The applicant's legal representative did not attend the next hearing.

20. The new expert report was submitted on 24 June 1996. The next day, the court held a hearing in which it granted the defendants additional time for their observations.

21. Following the judicial recess, the court held a hearing on 4 October 1996, in which the representative of one of the co-defendants requested the proceedings to be stayed until a final ruling on their rectification review before the Court of Cassation. Another motion was submitted asking the court to appoint yet another expert. The court denied both motions.

22. Neither the applicant, nor his representatives attended seven consecutive hearings held between 19 November 1996 and 9 April 1997.

23. At the next hearing held on 28 May 1997, the applicant's representative requested additional time to submit further observations, which the court granted.

24. In addition, some of the applicants reiterated their request for the expansion of the factual examination. Once again, the court denied it, holding that it was aimed at prolonging the proceedings.

25. The applicant and his representative did not attend the next hearing held on 1 July 1997, in which the prosecution submitted its observations on the merits. The court granted the defendants time to submit their counter observations.

26. The applicant and his representative also failed to attend four of the subsequent hearings held between 1 October 1997 and 20 March 1998.

27. On 8 May 1998 the court granted an extension of time to the defendants for their final observations. During the following four months, it obtained submissions from each defendant.

28. On 22 September 1998 the court convicted the applicant of being an accessory to bribery. It considered the amount of the bribery relatively small and sentenced him to one year, ten months and twenty days' imprisonment and fined him 29,108,333 Turkish liras (TRL).

29. On an unspecified date the applicant appealed.

30. Upon the applicant's specific request, the Court of Cassation scheduled a hearing for 8 March 2000. Having heard the applicant's final statement, the Court of Cassation upheld the judgment on 29 March 2000, by amending the duration of the prison sentence and the amount of the fine.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. 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...”

32. The Government contested that argument. They submitted that the case was rather complex, both from a factual and legal point of view. The proceedings involved multiple defendants, the preparation of expert reports, the hearing and cross-examining of witnesses, and the review of numerous procedural motions. Notably, at several hearings, no taking of evidence was possible due to the absence of one or more of the defendants and/or their representatives.

33. Accordingly, the Government were of the view that there had not been a delay attributable to the State authorities.

34. The applicant did not specifically address the Government's arguments. He maintained instead that the Court of Cassation's final decision – i.e. upholding *with amendment* – had resulted from the excessive length of the proceedings at the first instance level.

35. He submitted that “upholding with amendment” was an unusual ruling. He argued that the normal practice for the Court of Cassation would be to quash the judgment with instructions on the determination of the sentence. In such a case, he claimed, the assize court could have persuaded the Court of Cassation by insisting on its previous sentencing.

36. The Court recalls that the complaint about the Court of Cassation's divergence from the initial sentence had already been declared inadmissible at an earlier stage. The Court therefore focuses on the length of the proceedings only.

37. In that connection, the period to be taken into account began on 2 March 1993 when the prosecutor indicted the applicant, and ended on 27 March 2000 when the Court of Cassation upheld the conviction.

A. Admissibility

38. The Court notes that given the overall length of the proceedings, this complaint 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

39. 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, *Cesarini v. Italy*, judgment of 12 October 1992, Series A no. 245-B, p. 26, § 17).

40. The Court considers that the subject matter of the case before the domestic courts was undoubtedly complex, as shown, *inter alia*, by the number of defendants, the economic nature of the crime, the technical expertise needed for its investigation, and the examination of financial records and books of various polyclinics and the bank accounts of the parties involved. Moreover, throughout the proceedings, a number of witnesses were heard and two expert examinations were conducted.

41. The applicant failed to point to any period during which the authorities were inactive or could have acted differently so as to avoid any delays. To the contrary, the case file demonstrates that the judicial authorities acted with due diligence.

42. The assize court, for instance, rejected a number of procedural motions, *inter alia*, for an appointment of new experts, expansion of the factual examination or stay of proceedings, with an eye to avoid any unnecessary prolongation of the proceedings.

43. The same court scheduled hearings at reasonably short intervals; mostly once in every month or two. Similarly, it promptly held hearings upon the submission of expert reports and after each judicial recess.

44. Whenever evidence or statements could not be taken due to the absence of one or more of the defendants, the court ordered their presence at the next hearing.

45. In addition, it specifically instructed the experts to observe the statutory time limits for their submissions.

46. Thus, the Court finds nothing in the case file that suggests that the judicial authorities failed to proceed with the requisite diligence or that there was any time of inactivity attributable to them.

47. The conduct of the applicant, on the other hand, was far from exemplary. He and/or his representative failed to attend at least thirteen hearings, some of which were consecutive. On many occasions, his representative requested additional time for his submissions, which resulted in the further prolongation of the proceedings.

48. Finally, neither the applicant nor his representative has objected to the granting of additional time to the experts, which factor seemingly delayed the examination of the merits at an earlier stage of the trial.

49. In the light of the foregoing discussion, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President