



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

FOURTH SECTION

CASE OF ASLAN AND ŞANCI v. TURKEY

(Application no. 58055/00)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

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 Aslan and Şancı v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMEŖ,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 58055/00) 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 two Turkish nationals, Mr Abdurrahman Aslan and Mr Reşat Şancı (“the applicants”), on 9 May 2000.

2. The applicants were represented by Ms T. Aslan, a lawyer practising in Izmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 4 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicants’ right to a fair hearing by an independent and impartial tribunal to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1979 and 1973 respectively and were serving prison sentences at Nazilli Prison at the time of their applications to the Court.

5. On 23 February 1999 the applicants were arrested and taken into custody by police officers from the Anti-terror branch of the Kuşadası

Security Directorate. They were interrogated on 24 and 25 February 1999 respectively.

6. On 26 February 1999 the applicants were brought before the public prosecutor in Izmir. They were informed of their rights and in particular their right to be assisted by a lawyer, which they waived. The applicants confessed to having committed the offence of which they were accused, namely throwing Molotov cocktails at buildings. They claimed they had acted alone, that they were not involved in any illegal organisation and that they regretted their actions.

7. On the same day, the applicants were brought before the Kuşadası Magistrates' Court where they reiterated their statements given to the public prosecutor. Mr Sancı acknowledged in part the statements he had given to the police. He alleged in this connection that he had been subjected to ill-treatment in police custody. Mr Aslan acknowledged the contents of his statements made to the police. However, he claimed that he had signed without reading them. The court remanded both applicants in custody.

8. On 15 March 1999 the public prosecutor at the Izmir State Security Court filed a bill of indictment with that court accusing the applicants of having thrown Molotov cocktails at the buildings of the Ülkü Ocakları Association, Ziraat Bank, Halk Bank and Yaşar Bank in Kuşadası on 22 February 1999. He requested that they be convicted and sentenced under Articles 169 and 264 of the Criminal Code and Article 5 of Law no. 3713.

9. The first hearing, held before the Izmir State Security Court on 10 March 1999 in the applicants' absence, was taken up with procedural matters such as the measures to be taken for securing the presence of the accused.

10. Between 15 April 1999 and 15 July 1999 the court held three hearings during which it heard the applicants, who claimed that they had made their statements in police custody under duress. The court also took various procedural acts.

11. At a hearing held on 15 July 1999 the court noted that the testimony of the witness Mr I.E., taken by proxy, had been submitted to it. The applicants asked the court not to take the testimony into account. They further requested that a further on-site inspection be conducted in order to find out whether the offence had been committed at night time. Finally, they asked the court to hear the bank clerks as witnesses. On the same day, the court, finding that the evidence contained in the case file sufficiently elucidated the events, dismissed the applicants' requests. The prosecutor read out his observations on the merits of the case against the applicants. The next hearing was held on 2 September 1999.

12. At the hearing held on 14 October 1999 the military judge sitting on the bench of the Izmir State Security Court was replaced by a civilian judge. The court heard the applicants' final submissions on the merits of the case. On the same day, the Izmir State Security Court convicted the applicants as charged and sentenced them in respect of the offences to terms of

imprisonment of three years, fifty-five months and twenty days. In its decision, the court took into account the fact that the incident reports drawn up after the events corresponded to the applicants' submissions to the Magistrates' Court. The court further stated that it had not been convinced by the applicants' denials, having regard to the evidence contained in the case file (i.e. Mr.I.E's testimony, photographs of the events, expert reports, incident reports and the reports drawn up following a re-construction of events) and the applicants' submissions to the public prosecutor and the Magistrates' Court.

13. On 24 February 2000 the Court of Cassation upheld the judgment of the Izmir State Security Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002), *Öcalan v. Turkey* ([GC], no. 46221/99, §§ 52-54, ECHR 2005-...) and *Göç v. Turkey* ([GC], no. 36590/97, § 34, ECHR 2002-V).

15. By Law no. 5190 of 16 June 2004, published in the Official Journal on 30 June 2004, State Security Courts were abolished.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

16. The applicants complained that they had been denied a fair hearing by an independent and impartial tribunal on account of the presence of a military judge sitting on the bench of the Izmir State Security Court which tried them. They submitted that they had been convicted on the basis of their statements in police custody which had been taken under duress and that they had been denied the assistance of a lawyer at the initial stages of the proceedings. They complained that the domestic court had refused their request for a further investigation. Finally, they maintained that the written opinion of the principal public prosecutor at the Court of Cassation was never served on them, thus depriving them of the opportunity to put forward their counter-arguments. They relied on Article 6 §§ 1 and 3 (b) of the Convention, which in so far as relevant, reads as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.

...

3. Everyone charged with a criminal offence has the following minimum rights:

(b) to have adequate time and facilities for the preparation of his defence;...”

A. Admissibility

17. The Government maintained under Article 35 § 1 of the Convention that the applicants had failed to comply with the six-month rule as regards their complaint concerning lack of access to a lawyer at the initial stages of the proceedings. In this regard, they submitted that the applicants should have lodged their application with the Court within six months from the end of the preliminary investigation.

18. The applicants denied the Government’s argument.

19. The Court reiterates that it has already examined and rejected a similar preliminary objection made by the Government (see, in particular, *Yavuzaslan v. Turkey*, no. 53586/99, § 16, 22 April 2004). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned case.

20. Consequently, the Court rejects the Government’s preliminary objection.

21. Moreover, it considers that the applicants’ complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

B. Merits

1. Independence and impartiality of the State Security Court

22. The Government maintained, in particular, that the applicants had been convicted by a State Security Court which was composed of three civilian judges since the military judge had been replaced before the end of the proceedings.

23. The applicants maintained their allegations.

24. The Court has consistently held that certain aspects of the status of military judges sitting as members of the State Security Courts rendered their independence from the executive questionable (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, § 68; and *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII, § 39). The Court also found in *Öcalan v. Turkey* (cited above, §§ 114-115) that when a military judge participated in one or more

interlocutory decisions that continued to remain in effect in the criminal proceedings concerned, the military judge's replacement by a civilian judge in the course of those proceedings before the verdict was delivered, failed to dissipate the applicant's reasonably held concern about that trial court's independence and impartiality, unless it was established that the procedure subsequently followed in the state security court sufficiently allayed that concern.

25. In the instant case, the Court observes that the military judge sitting on the bench of the Izmir State Security Court was replaced only at the last hearing on the merits of the case (see paragraph 13 above). Prior to this period the domestic court had already heard the applicants on several occasions as well as the prosecutor's observations on the merits and, in particular, it had rejected on 15 July 1999 the applicants' request for a further investigation to be carried out. The final hearing held on 10 October 1999 consisted only of the court listening to the final submissions of the applicants and the prosecutor before reading out its verdict.

26. In these circumstances, the Court considers that the replacement of the military judge before the end of the proceedings failed to dispose of the applicants' reasonably held concern about the trial court's independence and impartiality (see, *a contrario*, *Ceylan v. Turkey* (dec.), no. 68953/01, ECHR 2005-...; and *Sevgi Yılmaz v. Turkey* (dec.), no. 62230/00, 20 September 2005).

27. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Fairness of the proceedings

28. Having regard to its finding of a violation of the applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 of the Convention relating to the fairness of the proceedings (see, among other authorities, *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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."

30. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with any relevant supporting documents within the time-limit fixed for the submission of the applicants' observations on the merits and that

failure to comply with these requirements may result in the Chamber's rejection of the claim in whole or in part.

31. In the instant case, on 22 March 2006 the applicants were requested to submit their claims for just satisfaction. They did not submit any claims within the specified time-limit and did not request an extension of the time-limit. Their Article 41 claims were eventually filed on 18 July 2006. The Court also observes that its practice is not to award moral damages in cases where it has found a violation of Article 6 § 1 of the Convention on account of the lack of independence and impartiality of the State Security Courts.

32. In view of the above, the Court makes no award under Article 41 of the Convention.

33. Nevertheless, the Court considers that where an individual, as in the instant case, has been convicted by a court which did not meet the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan*, cited above, § 210, *in fine*).

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 as regards the complaint relating to the independence and impartiality of the Izmir State Security Court;
3. *Holds* that it is not necessary to consider the applicants' other complaints under Article 6 of the Convention.

Done in English, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President