



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

SECOND SECTION

CASE OF SELEK v. TURKEY

(Application no. 43379/02)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

12/03/2007

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 Selek 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. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 43379/02) 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 Faruk Selek, on 13 November 2002.

2. The applicant was represented by Ms T. Esen, Ms Ö. Öker, and Ms S.P. Çelik. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 16 September 2004 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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. 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**

5. The applicant was born in 1953 and lives in Istanbul.

6. The applicant was a civil servant at the Istanbul Municipality.

7. On 22 December 1994 he was arrested by police officers from the Istanbul Security Directorate on suspicion of forgery. He admitted to the charges before the police.

8. On 26 December 1994 the applicant was brought before the investigating judge at the Istanbul Magistrate's Court, who ordered his detention on remand.

9. On 2 January 1995 the public prosecutor filed an indictment with the Istanbul 7th Criminal Court against the applicant and three co-accused (O.I., M.T. and N.S.), requesting that they be punished for committing forgery under Articles 503 § 1 and 522 of the Criminal Code. The public prosecutor further decided that the Law on the Prosecution of Civil Servants (*Memurin Muhakemeti Kanunu*) did not apply to this case as the offence was ordinary.

10. On 24 January 1995 the 7th Criminal Court commenced the proceedings. On 3 February 1995 it heard statements from the applicant and two other co-defendants. The applicant denied the charges against him, alleging that his statement in the police station had been extracted from him under duress. At the following hearing on 24 February 1995, the court released the applicant and two co-accused from detention on remand. It further decided to prolong, *in absentia*, the arrest warrant issued in respect of O.I. as he had absconded.

11. On 10 March 1995 the Istanbul public prosecutor launched an investigation concerning the applicant's alleged abuse of office in relation to the forgery. During the course of the investigation, the public prosecutor decided that he had no jurisdiction over the case as the applicant was a civil servant. Accordingly, he sent the file to the Istanbul Provincial Administrative Council (*İstanbul İl İdare Kurulu*), pursuant to the provisions of the Law on the Prosecution of Civil Servants, in order to seek authorisation to prosecute the applicant.

12. On 7 December 1995 the Provincial Administrative Council decided not to authorise the applicant's prosecution.

13. On 20 January 1998 the Supreme Administrative Court put aside this decision and ordered that the applicant be tried. Subsequently, on 25 March 1998 the public prosecutor filed another indictment with the Istanbul 11th Criminal Court accusing the applicant of abuse of office.

14. On 10 December 1998 the 11th Criminal Court decided to join the case pending before it to the proceedings before the 7th Criminal Court, and sent the case file to the latter.

15. In the course of the proceedings, during the ten hearings held between 5 March 1996 and 3 November 1998, the applicant's lawyer explicitly asked the court to separate his client's case from the others and to conclude it. The court each time rejected these requests given the search for O.I., and decided to postpone the hearings, awaiting the outcome of the arrest warrant. In particular, at one of these hearings on 25 November 1997, the applicant's lawyer informed the court that he had heard that O.I. had

escaped abroad. He further stated that his client had been victimised as a result of the prolongation of the proceedings.

16. On 20 May 1999 the court decided that the criminal proceedings concerning O.I. should proceed separately as he could not be found. The same day the court convicted the applicant and sentenced him to ten months' imprisonment and a fine. The imprisonment was then commuted to a fine and its execution was suspended in accordance with Section 6 of Law no. 647 (the Law on the execution of sentences).

17. Both the applicant and the public prosecutor appealed against the decision, the applicant alleging that there was no concrete evidence on which he could be convicted.

18. On 27 May 2002 the Court of Cassation rejected the reasons for appeal but quashed the judgment on account of a miscalculation of the amount of the fine imposed on the applicant. The Court of Cassation did not order a retrial, but corrected the amount by reducing the fine and upheld the judgment with this amendment.

THE LAW

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

19. The applicant complained that the criminal proceedings against him were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention, which reads as relevant 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. Admissibility

20. The Government asked the Court to dismiss the complaint as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They maintained that the applicant did not raise the substance of his complaint before the domestic courts, which were always in a position to examine such matters.

21. The Court reiterates that the obligation to exhaust domestic remedies only requires that an applicant make normal use of effective and sufficient remedies, that is those capable of remedying the situation at issue and affording redress for the breaches alleged.

22. The Court observes that the Turkish legal system does not provide any remedies to accelerate the proceedings. Nor, at the material time, did it award any compensation for delays. The Court accordingly concludes that

there was no appropriate and effective remedy which the applicant should have exercised for the purposes of Article 35 § 1 of the Convention (see *Hartman v. Czech Republic*, no. 53341/99, § 69, ECHR 2003-VIII (extracts)). It therefore rejects the Government's preliminary objection.

23. The Court notes that the 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

24. The Court notes that the period to be taken into consideration began on 22 December 1994 with the applicant's arrest and ended on 27 May 2002, when the Court of Cassation upheld the decision of the first-instance court. It thus lasted over seven years and five months, for two levels of jurisdiction.

25. The Government maintained that, in the present case, the competent authorities initiated the proceedings without losing any time. Although the domestic court experienced difficulties because one of the co-accused (O.I.) had absconded, this did not prolong the trial, contrary to the applicant's claim that the failure to separate his case from O.I.'s caused delay. They argued that, for the proper administration of justice, the domestic court did not separate the criminal proceedings until the appropriate time, i.e. 20 May 1999. Moreover, they submitted that the oral evidence of several witnesses had to be obtained.

26. The applicant maintained his allegations.

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

28. The Court notes that the criminal case against the applicant was in fact ready for decision well before 20 May 1999, since all but one of the defendants had submitted their observations by that date. However, the proceedings were prolonged while a search was made for the fugitive defendant, despite the applicant's persistent requests that the court proceed with his case separately (paragraph 15 above). The Court further observes that a period of three years elapsed between the first-instance court's decision of 20 May 1999 and the decision of the Court of Cassation on 27 May 2002. The Government did not offer any explanation for this delay.

29. Recalling that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet the all requirements of that provision (see

Arvelakis v. Greece, no. 41354/98, § 26, 12 April 2001), the Court considers that the domestic courts could have applied stricter measures to speed up the proceedings in the present case.

30. In light of the foregoing, the Court considers that the total length of the proceedings at issue cannot be considered to have complied with the “reasonable time” requirement of Article 6 § 1 of the Convention.

There has accordingly been a violation of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 50,000 new Turkish liras (YTL), equivalent to 26,394 euros (EUR), in respect of pecuniary damage, and YTL 100,000 (EUR 52,786) for non-pecuniary damage.

33. The Government contested these claims.

34. The Court finds no causal link between the applicant’s claim for pecuniary damage and the violation found. Accordingly it makes no award under that head. However, it accepts that the applicant must have suffered some non-pecuniary damage on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation. Ruling on equitable basis, it awards the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed YTL 5,000 (EUR 2,639) for costs and expenses incurred before the domestic courts and the Court.

36. The Government contested this claim.

37. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant the global sum of EUR 1,000 in respect of cost and expenses.

C. Default interest

38. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable; these sums are to be converted into New Turkish Liras at the rate applicable on the date of settlement;
 - (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 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President