



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

SECOND SECTION

CASE OF YAVUZ AND OSMAN v. TURKEY

(Application no. 39863/02)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

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 Yavuz and Osman 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 I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 39863/02) 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 Hasan Yavuz and by a Syrian national, Mr Abdülmenaf Osman ("the applicants"), on 2 October 2002.

2. The applicants were represented by Mr F. GümüŖ, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 9 May 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the independence and impartiality of the Diyarbakır State Security Court and the length of the proceedings to the respondent Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1955 and 1965 respectively. The first applicant lives in Batman and the second applicant is currently detained in the Gaziantep Prison.

5. On 13 March 1993 the applicants were taken into custody by policemen from the Anti-Terrorism Branch of the Batman Security

Directorate on suspicion of their membership of an illegal organisation, namely the Workers' Party of Kurdistan ("the PKK").

6. On 13 April 1993 the applicants were brought before the public prosecutor and subsequently the investigating judge, who ordered the applicants' detention on remand.

7. On 26 April 1993 the Diyarbakır State Security Court Public Prosecutor filed an indictment against 38 accused persons, including the applicants. He accused the first applicant of membership of the PKK and requested the court to sentence him under Article 168 § 2 of the Criminal Code. The public prosecutor further accused the second applicant of carrying out activities aimed at breaking up the unity of the State and removing part of the national territory from the State's control. The prosecutor requested the court to sentence him in accordance with Article 125 of the Criminal Code.

8. On 18 June 1999 the constitution was amended and the military judge sitting on the bench of the Diyarbakır State Security Court was replaced by a civilian judge.

9. Between 16 June 1993 and 12 March 2002, the court held 69 hearings. On 12 March 2002 the Diyarbakır State Security Court, which was composed of three civilian judges, acquitted the first applicant of the charges against him. The court further found the second applicant guilty as charged and sentenced him to the death penalty under Article 125 of the Criminal Code. The death penalty was commuted to a life sentence.

10. On 1 October 2002 the Court of Cassation upheld the decision of the Diyarbakır State Security Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

11. 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 on the bench of the Diyarbakır State Security Court which tried them. The applicants further complained that the length of the criminal proceedings brought against them was in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention.

Article 6 § 1 of the Convention, in so far as relevant, reads:

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

1. As regards the second applicant, Mr Abdülmenaf Osman

12. The Court observes that the complaints brought by the second applicant, Mr Abdülmenaf Osman, were the subject of a similar application pending before the Court (no. 4415/02, judgment pronounced on the same day as the present case).

13. Consequently, this part of the present application is inadmissible in terms of Article 35 § 2 (b) of the Convention for being substantially the same as that examined in application no. 4415/02, and must be rejected pursuant to Article 35 § 4.

2. Independence and impartiality of the trial court

14. The Court observes that the first applicant was acquitted at the end of the criminal proceedings brought against him. Any alleged unfairness in his trial before the Diyarbakır State Security Court must therefore be considered to have been rectified by the acquittal judgment. Thus, he can no longer claim to be a victim of the alleged violation (see *Ahmet Yavuz and others v. Turkey* (dec.), no. 38827/02, 4 January 2005, and *Fehime Ete and Şehadet Ete v. Turkey* (dec.), no. 29315/02, 13 June 2006).

15. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Length of the proceedings

A. Admissibility

16. The Court notes that the first applicant's complaint regarding the length of the criminal proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. (The first applicant will simply be referred to as “the applicant” hereafter.)

B. Merits

17. The Government stated that the length of the proceedings in the instant case could not be considered unreasonable in view of the number of accused persons, the complexity of the case and the nature of the offence with which the applicant was charged.

18. The Court observes that the period to be taken into consideration began on 13 March 1993 when the applicant was taken into police custody, and ended on 1 October 2002 with the decision of the Court of Cassation. The proceedings therefore lasted for more than nine years and six months for two levels of jurisdiction.

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 has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that the length of the proceedings against the applicant was excessive and failed to meet the “reasonable time” requirement of Article 6 § 1.

There has accordingly been a breach of this provision.

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.”

23. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint of the first applicant concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the first applicant.

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

S. DOLLÉ
Registrar

J.-P. COSTA
President