



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

THIRD SECTION

CASE OF TANER v. TURKEY

(Application no. 38414/02)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

15/05/2007

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 Taner 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 R. TÜRMEŖ,

Mr C. BİRSAN,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 38414/02) 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 Umut Taner (“the applicant”), on 2 October 2002.

2. The applicant was represented by Mr K. Bilgiç, 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. The applicant alleged, in particular, that he did not receive a fair and public hearing, as he was not informed promptly of the accusation against him, he did not have adequate time and facilities for the preparation of his defence and that he was not allowed to defend himself in person or through a lawyer.

4. On 13 December 2005 the Court decided to give notice of the application 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.

5. On 30 May 2006 the Government filed observations on the admissibility and merits. On 19 October 2006 the President of the Third Section refused to include in the case file the applicant's observations in reply to Government's observations and his just satisfaction claims which were filed outside the time-limit (Rule 38 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1984 and lives in İzmir.

7. On 26 June 2002 the applicant, together with a friend of his, quarrelled with a man in a park. The quarrel had turned into a fight and the applicant stabbed the man in his left leg.

The police and the public prosecutor took the statements of the parties, including the applicant. The applicant denied having injured the man. Following their questioning, they were all released.

8. On 3 July 2002 the Public Prosecutor at the İzmir Magistrates' Court filed an indictment against the applicant, on account of assault with a knife and occasioning actual bodily harm. The indictment was not notified to the applicant.

9. After having examined the case file, on 17 July 2002 the İzmir Magistrates' Court issued a penal order, convicting the applicant and sentencing him to pay 290,805,465 Turkish liras (TRL).

10. On 30 August 2002 the penal order was notified to the applicant.

11. On 6 September 2002 the applicant challenged the decision of the İzmir Magistrate's Court, before the İzmir Criminal Court of First Instance. He argued that he had been deprived of his right of defence in violation of Article 6 of the Convention.

12. On 11 September 2002 the İzmir Criminal Court of First Instance upheld the decision of the Magistrate's Court, maintaining that it was in accordance with the law and procedure.

13. On 25 September 2002 the İzmir Public Prosecutor issued a payment order under which the applicant was obliged to pay the relevant amount. He was warned that in case he failed to pay the due amount, the fine would be converted into prison sentence.

14. The applicant paid the relevant charge on 26 November 2002.

II. THE RELEVANT DOMESTIC LAW

15. Article 465 § 4 of the former Criminal Code provide as follows:

“If the action does not cause any sickness or prevent the victim from attending his/her usual occupation (...) the offender shall be sentenced to 2 to 6 months' imprisonment or to a fine of TRL 200 to 2,500. However, the legal proceedings may be initiated only upon the victim's complaint.”

16. The relevant Articles of the Code of Criminal Procedure which was in force at the time of the events, read as follows:

Article 302

“Save the exceptional circumstances described by law, the courts shall decide on objections filed against the penal orders without holding a hearing.

If the objection is upheld, the same court shall decide on the merits of the case.”

Article 386

“The judge at the magistrates' court may, without holding a hearing, rule on the offences which are within the jurisdiction of the Magistrates' Court and it may subsequently issue a penal order.

Only the sentencing to a fine, an imprisonment up to three months, a suspension of a certain profession and a seizure (...) may be adjudicated by a penal order. (...)”

Article 387

“If the judge at the magistrates' court considers that the lack of a hearing may put the offender in an unfavourable situation, then it could be decided to hold a hearing. “

Article 388

“In addition to the conviction, it should be noted in the penal order, the designation of the offence, the applicable provisions of law, the relevant evidence, and the possibility of raising an objection within eight days after its notification (...). The petition which raises an objection to the penal order shall be approved by the trial judge. (...)”

Article 390

“A hearing shall be held if the objection is raised against an imprisonment sentence given by a penal order. (...)”

The suspect can be represented by a defence counsel during the hearing. (...)”

The objections against the penal orders (...) are examined by a judge at the criminal court of first instance, in line with the procedure described under Articles 301, 302 and 303. The objection would suspend the execution of the penal order.”

17. In a judgment given on 30 June 2004 the Constitutional Court declared Article 390 § 3 of the Code of Criminal Procedure unconstitutional and a nullity. It held that lack of a hearing before the Criminal Court of First Instance that examines the objections to the penal order, would be in breach of the right to a fair hearing guaranteed under Article 6 of the Convention, as well as Article 36 of the Constitution.

18. Moreover, the new Criminal Code and the Code of Criminal Procedure which came into force on 1 June 2005, contain no provision concerning penal orders.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained that he did not receive a fair and public hearing, in the determination of the criminal charge against him. He further complained that he was not informed promptly of the accusation against him, he did not have adequate time and facilities for the preparation of his defence and that he was not allowed to defend himself in person or through a lawyer. He invoked Article 6 §§ 1 and 3 (a), (b) and (c) of the Convention:

“1. In the determination (...) of any criminal charge against him, everyone is entitled to a fair and public hearing (...).

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

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

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

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (...)”

20. The Government disputed these allegations. They contended that the penal order was issued by the Magistrate's Court in compliance with the relevant provisions of the Code of Criminal Procedure. This was a simplified procedure for minor crimes, aimed at diminishing the work load of the courts. Moreover they maintained that the Turkish law provided an option to object to penal orders.

21. The Government further maintained that, following the coming into force of the new Criminal Code and Code of Criminal Procedure the procedure of issuing of penal orders no longer exists in Turkish law.

A. Admissibility

22. The Court notes that 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

1. *The general principles*

23. The Court reiterates that the public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, *Sutter v. Switzerland*, judgment of 22 February 1984, Series A no. 74, p. 12, § 26).

24. It recalls that, read as a whole, Article 6 guarantees the right of an accused to participate effectively in a criminal trial. In general this includes not only the right to be present, but also the right to receive legal assistance, if necessary, and to follow the proceedings effectively. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c) and (e) of Article 6 § 3 (see, among other authorities, *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, pp. 10–11, § 26).

25. The Court further notes that the provisions of paragraph 3 (a) of Article 6 point to the need for special attention to be paid to the notification of the “accusation” to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on written notice of the factual and legal basis of the charges against him (*Kamasinski v. Austria* judgment of 19 December 1989, Series A no. 168, pp. 36–37, § 79). Article 6 § 3 (a) of the Convention affords the defendant the right to be informed not only of the “cause” of the accusation, that is to say the acts he is alleged to have committed and on which the accusation is based, but also the legal characterisation given to those acts. That information should be detailed (*Pélissier and Sassi v. France* [GC], no. 25444/94, § 51, ECHR 1999-II; *Dallos v. Hungary*, no. 29082/95, § 47, 1 March 2001; *Lakatos v. Hungary* (dec.), no. 43659/98, 20 September 2001).

2. *Application of these principles to the present case*

26. The Court considers that, in the instant case, it is more appropriate to deal with the applicant's complaints under Article 6 § 1 globally due to the overlapping nature of the issues and since the sub-paragraphs of Article 6 § 3 may be regarded as specific aspects of the general fairness guarantee of the first paragraph.

27. At the outset, the Court notes that in a judgment given on 30 June 2004, the Constitutional Court unanimously declared

Article 390 § 3 of the former Criminal Code unconstitutional and a nullity, holding that depriving individuals of a public hearing was in violation of the right to a fair trial. Furthermore, with the new Criminal Code and the Code of Criminal Procedure which came into force on 1 June 2005, the practice of issuing penal orders ceased to exist.

28. It notes, however, that in accordance with the relevant domestic law prevailing at the time of the events, no public hearing was held during the applicant's prosecution. Both the İzmir Magistrates' Court that sentenced the applicant to a pay a fine and the Izmir Criminal Court of First Instance that dismissed his objection, took their decision on the basis of the documents found in the case file. The Court, therefore, considers that the applicant was not able to follow the criminal proceedings effectively.

29. Additionally, the indictment dated 3 July 2002 was not notified to the applicant, leaving him unaware of the factual and legal basis of the charges against him. The first time the applicant was informed of the charges against him was after the court had issued the penal order and sentenced him to pay a fine.

30. In view of the above, the Court concludes that the procedure followed by the judicial authorities had prevented the applicant from exercising his defence rights properly and thus rendered the criminal proceedings unfair.

31. It holds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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.”

33. The Court notes that the applicant did not submit any claim for just satisfaction within the time allowed.

34. According to its settled case-law (see, most recently, *Giniewski v. France*, no. 64016/00, § 59, 31 January 2006), the Court does not make any award by way of just satisfaction where quantified claims and the relevant documentation have not been submitted within the time-limit fixed for that purpose by Rule 60 § 1 of the Rules of Court.

35. In those circumstances, the Court considers that the applicant has failed to comply with his obligations under Rule 60. As no valid claim for just satisfaction has been submitted, the Court considers that no award should be made in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President