



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

FOURTH SECTION

CASE OF FEHMİ KOÇ v. TURKEY

(Application no. 71354/01)

JUDGMENT

STRASBOURG

27 March 2007

FINAL

27/06/2007

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 Fehmi Koç v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMESEN,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 6 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 71354/01) 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 Fehmi Koç ("the applicant"), on 28 October 2000.

2. The applicant was represented by Mr F. Gümüş, 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 8 July 2005 the Court decided to communicate the application. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and he is currently detained in the Diyarbakır Prison.

5. On 12 March 1995 the applicant was taken into police custody on suspicion of membership of an illegal organisation.

6. On 10 April 1995 he was brought before a single judge of the Diyarbakır State Security Court who ordered his detention on remand. In the course of the proceedings before the court, the applicant denied the statements that he had signed while he was in police custody.

7. On 13 April 1995 the chief public prosecutor at the Diyarbakır State Security Court filed a bill of indictment with the latter charging the applicant and sixteen other suspects, under Article 125 of the Criminal Code, with carrying out activities for the purpose of bringing about the secession of part of the national territory.

8. In the course of the criminal proceedings, the Diyarbakır State Security Court held thirty hearings and heard seventeen witnesses.

9. On 3 June 1999 the Diyarbakır State Security Court composed of two civilian judges and a military judge, convicted the applicant as charged and sentenced him to death under Article 125 of the Criminal Code. Taking into account the applicant's conduct during the trial, the death penalty was commuted to a life sentence.

10. On 4 June 1999 the applicant appealed against the judgment of the State Security Court.

11. On 21 February 2000 the Court of Cassation upheld the judgment of the State Security Court.

12. On 5 May 2000 the Court of Cassation's decision was deposited with the registry of the Diyarbakır State Security Court.

II. RELEVANT DOMESTIC LAW

13. A full description of the domestic law may be found in *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. As regards the independence and impartiality of the Diyarbakır State Security Court and the fairness of the proceedings

14. The applicant complained that he had not received a fair trial by an independent and impartial tribunal due to the presence of a military judge on the bench of the Diyarbakır State Security Court, which tried and convicted him. He further alleged that he had been denied a fair hearing before the domestic courts since his conviction was not based on concrete evidence. The applicant invoked Article 6 § 1 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.

1. Admissibility

15. The Government argued under Article 35 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Diyarbakır State Security Court must be rejected for failure to comply with the six-month rule. They maintained that since the applicant complained of the lack of independence and impartiality of the Diyarbakır State Security Court, he should have lodged his application with the Court within six months of the date on which that court rendered its judgment, namely on 3 June 1999.

16. They further argued that this complaint must anyhow be rejected for non-exhaustion of domestic remedies. They maintained that the applicant had not raised this complaint before the domestic courts. In this respect, they referred to the case-law of the Court (in particular, *Remli v. France*, judgment of 23 April 1996, *Reports of Judgments and Decisions* 1996-II, p. 571, § 33).

17. As to the Government's preliminary objection concerning the alleged non-compliance with the six-month rule, the Court reiterates that it has already examined similar preliminary objections of the Government in the past and has rejected them (see *Özdemir v. Turkey*, no. 59659/00, § 29, 6 February 2003; *Doğan and Keser v. Turkey*, nos. 50193/99 and 50197/99, § 17, 24 June 2004). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned cases.

18. As to the objection concerning the alleged non-exhaustion of domestic remedies, the Court finds no basis for departing in this particular application from its findings in similar cases (see *Vural v. Turkey*, no. 56007/00, § 22, 21 December 2004; *Çolak v. Turkey (no. 1)*, no. 52898/99, § 24, 15 July 2004; *Özel*, cited above, § 25).

19. Accordingly, the Court rejects the Government's preliminary objections.

20. In the light of its established case-law (see, amongst many authorities, *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII), and in view of the materials submitted to it, the Court considers that the applicant's 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 this part of 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. It must therefore be declared admissible.

2. *Merits*

a) **As to the independence and impartiality of the Diyarbakır State Security Court**

21. The Government maintained that the State Security Courts had been established by law to deal with threats to the security and integrity of the State. They submitted that in the instant case there was no basis to find that the applicant could have any legitimate doubts about the independence of the Diyarbakır State Security Court. The Government further referred to the constitutional amendment of 1999 whereby military judges could no longer sit on such courts. In this connection, they noted that the state security courts had been abolished as of 2004.

22. The Court notes that it has examined similar cases in the past and has found a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34; *Özdemir*, cited above, §§ 35-36). The Court finds no reason to reach a different conclusion in the instant case. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 in this respect.

b) **As to the fairness of the proceedings**

23. Having regard to its finding that the applicant's right to a fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine the applicant's remaining complaint concerning the alleged unfairness of the proceedings (*Işık v. Turkey*, no. 50102/99, § 38-39, 5 June 2003).

B. As regards the length of proceedings

24. The applicant alleged that the length of the proceedings at issue had contravened the “reasonable time” requirement, provided for in Article 6 § 1 of the Convention.

25. The Government disputed the applicant's allegation and submitted that the length of the proceedings had not exceeded a reasonable time. They argued that the case was of a complex nature given that the national authorities had to investigate very serious incidents involving seventeen suspects, including the applicant. In this connection, they noted that the prosecuting authorities had to establish the involvement of the applicant in a number of illegal acts, namely the burning of a bus in Diyarbakır on 25 February 1995, a bomb attack on a stadium during a football game on 5 March 1995 and another bomb attack on a transformer on 20 March 1995.

26. Furthermore, the Government averred that the applicant had caused a substantial delay of almost three years in the course of the proceedings. They pointed out that the applicant had failed to appear at the State Security

Court hearings of 27 June 1998, 1 July 1998, 3 September 1998, 22 October 1998, 10 December 1998, 11 February 1999, 11 March 1999, and 15 April 1999. Nor did the applicant and his counsel appear at the hearings of 20 May 1999 and 3 June 1999 in order to make concluding submissions. The applicant refused to attend these hearings because he did not want to be searched by the security forces.

27. The Court notes that the proceedings began on 12 March 1995 when the applicant was taken into police custody, and ended on 21 February 2000, when the Court of Cassation upheld the judgment of the Diyarbakır State Security Court. The proceedings thus lasted four years and eleven months.

28. The Court recalls 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, amongst many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

29. The Court observes that the present case was of a complex nature owing in particular to the number of suspects and the difficulties faced by the domestic courts in establishing the facts of serious crimes and of the involvement of each suspect in each crime.

30. As to the conduct of the national authorities, the Court reiterates that only delays for which the State can be held responsible may justify a finding that a “reasonable time” has been exceeded (*Papachelas v. Greece* [GC], no. 31423/96, § 40, ECHR 1999-II). In this connection, the Court notes that the applicant failed to indicate any period of inactivity attributable to the national authorities.

31. As regards the conduct of the applicant, it appears from the Government's submissions that the applicant and his counsel failed to attend ten hearings which caused a substantial delay in the proceedings (see paragraph 26 above). These submissions were not challenged by the applicant.

32. In the light of the foregoing, the Court considers that the national authorities cannot be faulted for the length of the proceedings before the Diyarbakır State Security Court which lasted four years, one month and twenty days. The proceedings before the Court of Cassation lasted approximately eight and a half months, which period cannot be considered excessive.

33. It follows that there has been no violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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.”

35. The applicant did not submit any claims for just satisfaction, although he was requested to do so in the Registry's letter of 8 November 2005. In the absence of any quantified claim, the Court makes no award under this heading (see Rule 60 §§ 1 and 2 of the Rules of Court).

36. Even though the applicant submits no claims for just satisfaction, where the Court finds that an applicant has been convicted by a tribunal which is not independent and impartial within the meaning of Article 6 § 1, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant is granted in due course a retrial by an independent and impartial tribunal (*Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the applicant's complaint concerning the alleged lack of independence and impartiality of the Diyarbakır State Security Court;
3. *Holds* that it is unnecessary to examine the applicant's complaint under Article 6 § 1 of the Convention relating to the alleged unfairness of the proceedings;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the length of the proceedings;
5. *Makes* no award in respect of just satisfaction.

Done in English, and notified in writing on 27 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President