



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

THIRD SECTION

CASE OF ATICI (no. 2) v. TURKEY

(Application no. 31540/02)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Atıcı (no. 2) v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŒ,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 31540/02) 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 Hüseyin Atıcı (“the applicant”), on 25 July 2002.

2. The applicant was represented by Ms G. Tuncer, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 1 June 2006 the Court 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1970 and lives in Kocaeli.

5. On 16 October 1992 the applicant was arrested by police officers from the anti-terrorism branch of the Istanbul Security Directorate on suspicion of his membership of the Dev-Sol (*the Revolutionary Left*) and was taken into police custody.

6. On 26 October 1992 he was brought before the investigating judge at the Istanbul State Security Court, who ordered the applicant's detention on remand.

7. On 8 January 1993 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and sixteen other co-accused, charging them, *inter alia*, with membership of an illegal armed organisation and for participating in activities that undermined the constitutional order of the State. The public prosecutor sought the death penalty for the applicant pursuant to Article 146 § 1 of the Criminal Code.

8. In 2004 the State Security Courts were abolished following a constitutional amendment and the applicant's case was transferred to the Istanbul Assize Court.

9. On 2 May 2005 the Istanbul Assize Court convicted the applicant as charged and sentenced him to life imprisonment.

10. The Court of Cassation quashed the judgment of the first-instance court. The case was remitted before the Istanbul Assize Court where it is still pending.

THE LAW

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

11. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

12. The Government contested that argument. They submitted that the case was complex, considering the charges against the applicant and the need to organise a large-scale trial involving sixteen defendants and numerous witnesses. They contended that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

13. The Court notes that the period to be taken into consideration began on 16 October 1992 when the applicant was taken into police custody. The proceedings are still pending before the Istanbul Assize Court. They have thus lasted over fourteen years.

A. Admissibility

14. 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

15. 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)

16. 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).

17. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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 in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government contested the claim.

21. The Court considers that the applicant must have sustained non-pecuniary damage on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone.

Therefore, ruling on an equitable basis, it awards him EUR 9,600 under this head.

B. Costs and expenses

22. The applicant claimed EUR 3,000 in respect of legal fees. He also requested to be awarded a certain sum for the costs and expenses incurred before the Court, leaving the matter to the Court's discretion.

23. The Government contested the applicant's claim as being unsubstantiated by any documentation.

24. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant failed to submit any supporting documents in support of his claim. The Court therefore does not award any sum under this head.

C. Default interest

25. 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 9,600 (nine thousand six hundred euros) in respect of non-pecuniary damage; to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President