



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

FOURTH SECTION

CASE OF MAHMUT ASLAN v. TURKEY

(Application no. 74507/01)

JUDGMENT

STRASBOURG

2 October 2007

FINAL

02/01/2008

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 Mahmut Aslan v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMEŒ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 11 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 74507/01) 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 Mahmut Aslan (“the applicant”), on 2 November 2000.

2. The applicant was represented by Mr P. Frei, lawyer practising in Zurich. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 4 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the criminal proceedings and the lack of an effective domestic remedy 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1959 and lives in Seewen, Switzerland.

5. On 17 May 1982 the applicant was arrested and taken into custody. On 8 July 1982 he was remanded in custody.

6. On 6 December 1982 the public prosecutor at the Diyarbakır Martial Law Court filed a bill of indictment with the latter, accusing the applicant of

membership of an illegal organisation. He requested that the applicant be convicted and sentenced under Article 168 § 1 of the Criminal Code.

7. On 19 February 1985 the Diyarbakır Martial Law Court convicted the applicant as charged and sentenced him to twenty-four years' imprisonment. This judgment was quashed by the Military Court of Cassation on 10 April 1990.

8. On 27 November 1990 the applicant was released from detention.

9. Subsequent to promulgation of Law no. 3953 on 27 December 1993, which abolished the jurisdiction of the Martial Courts, the Diyarbakır Assize Court acquired jurisdiction over the applicant's case.

10. On 13 July 1998 the Diyarbakır Assize Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time limit under Articles 102 and 104 of the Criminal Code had expired. At the time of this decision the applicant was not represented by a lawyer before this court. However, this judgment was erroneously notified to Mr S.D. (the legal representative of another co-accused, who bore the same name and surname as the applicant, during the proceedings before the Diyarbakır Martial Law Court) and became final on 12 March 1999.

11. The applicant inquired about the developments in his case on 16 May 2000. As the judgment was in his favour, the applicant did not lodge an appeal with the Court of Cassation.

THE LAW

I. ADMISSIBILITY

12. The Government argued, firstly, that the applicant was no longer a victim since the proceedings against him had been discontinued. Secondly, they maintained that the applicant had failed to exhaust domestic remedies as he did not raise the substance of his complaints before the national authorities. Finally, the Government submitted that the applicant had failed to comply with the six-month rule. They maintained in this respect that the applicant should have lodged his application with the Court within six months of the date on which the decision of the Diyarbakır Assize Court became final and that it was incumbent on the applicant to follow the proceedings with due diligence in order to keep himself informed of the date on which this decision was rendered or deposited with the registry of the court.

13. The applicant disputed the Government's arguments.

14. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, a breach of the Convention (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In the instant case, the Court considers that the discontinuation of the criminal proceedings against the applicant does not constitute recognition or a redress for the violation alleged by the applicant. Accordingly, the Government's objection under this head should be rejected.

15. The Court further reiterates that it has already examined and rejected, in previous case, similar objections of the Government as regards the alleged failure to exhaust domestic remedies (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned application. It therefore also rejects the Government's objection under this head.

16. As to whether the applicant has complied with the six-month rule, the Court reiterates that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33).

17. In the instant case, it is not disputed that the applicant learned of the decision of the Diyarbakır Assize Court's judgment on 16 May 2000, i.e. one year and ten months after it was rendered. Contrary to domestic law and practice, this judgment was never served on the applicant but on a lawyer who did not represent him. The Government have failed to provide the Court with any explanation in this respect. Therefore, the Court, taking into account, particularly, the overall length of the criminal proceedings against the applicant, does not find it unreasonable that the applicant waited for the official notification of the judgment and did not inquire about the development in the case against him until 16 May 2000. The application was lodged with the Court on 2 November 2000. In view of the above, the Court considers that the application was introduced within the six-month time-limit provided in Article 35 § 1 of the Convention. It therefore rejects the Government's objection under this head also.

18. Moreover, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible has been established. It must therefore be declared admissible.

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

19. The applicant complained that the length of the criminal proceedings brought against him exceeded the “reasonable time” requirement under Article 6 § 1 of the Convention, which provides 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. Period to be taken into consideration

20. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the “reasonable time” requirement laid down by Article 6 § 1 began on 17 May 1982, the date of the applicant's arrest, and ended on 13 July 1998, when the Diyarbakır Assize Court ordered the termination of the criminal proceedings against the applicant. They therefore lasted approximately sixteen years.

21. The Court's jurisdiction *ratione temporis* permits it to only consider the period of eleven years and five months that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights. It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (see *Şahiner v. Turkey*, no. 29279/95, § 22, ECHR 2001-IX, and *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001). On that critical date the proceedings had already lasted more than four years and eight months.

B. Reasonableness of the length of the proceedings

22. The Government maintained that, in the circumstances of the present case, the length of the criminal proceedings could not be considered unreasonable. In this respect, they referred to the number of the co-accused and the time spent by the domestic court to gather evidence. The Government further submitted that the applicant and the co-accused had contributed to the prolongation of the proceedings by failing to attend a number of hearings.

23. The applicant maintained his allegations.

24. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, in particular, *Ege v. Turkey*, no. 47117/99, §§ 23-25, 29 March 2005, and *Gümüştan v. Turkey*, no. 47116/99, §§ 24-26, 30 November 2004).

25. Having examined all the material submitted to it and 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.

26. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. The applicant further complained that there had been no effective remedy in domestic law whereby he could challenge the excessive length of the criminal proceedings in question. He relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

28. The Government disputed the applicant's argument. In particular, they stated that he could have filed a complaint with the public prosecutor or initiated a civil action for damages against the officials who had allegedly caused delays in the proceedings.

29. The Court has examined similar cases on previous occasions and has found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicant could have contested the length of the proceedings at issue (see, in particular, *Bahçeyaka v. Turkey*, no. 74463/01, §§ 26-30, 13 July 2006, and *Tendik and Others v. Turkey*, no. 23188/02, §§ 34-39, 22 December 2005). It finds no reason to depart from that conclusion in the present case.

30. There has accordingly been a breach of Article 13.

IV. 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, costs and expenses

32. The applicant claimed damages and costs and expenses but left the assessment of the amounts to the discretion of the Court. He asked the Court to determine a sum which takes into account *inter alia* the fact that he had been tortured in custody and that he had lost his job as a result of his

lengthy remand in custody. In respect of costs and expenses he submitted that he had been charged with 6 hours of work at the rate of 200 Swiss franc (CHF) and expenses at CHF 75 plus taxes.

33. The Government requested the Court not to award any damages.

34. The Court notes that there is no evidence before it of any pecuniary damage. On the other hand, it accepts that the applicant must have suffered non-pecuniary damage, such as distress and frustration, on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Making an assessment on an equitable basis, it awards the applicant 9,500 euros (EUR) plus any tax that may be chargeable on that amount.

35. As for costs and expenses, according to the Court's case law, an applicant is entitled reimbursement of 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500.

B. Default interest

36. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 9,500 (nine thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President