



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

THIRD SECTION

CASE OF UYSAL AND OSAL v. TURKEY

(Application no. 1206/03)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Uysal and Osal 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. TÜRMEŖ,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 1206/03) 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 two Turkish nationals, Mr Sait Uysal and Mr İskan Osal (“the applicants”), on 20 November 2002.

2. The applicants were 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 29 January 2007 the Court decided to give notice of the application 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 applicants were born in 1974 and 1972 respectively and live in Şırnak.

5. The applicants were taken into police custody on 27 June 1992 and 24 May 1992 respectively on suspicion of their membership of an illegal organisation, the PKK (the Kurdistan Workers' Party). On 9 July 1992 and 8 June 1992 respectively, the applicants were brought before the investigating judge, who ordered their detention on remand.

6. On 1 September 1992 the Diyarbakır State Security Court Public Prosecutor filed an indictment against 49 accused persons, including the applicants. He accused the applicants 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 the applicants in accordance with Article 125 of the Criminal Code.

7. On 12 June 1998 the applicants were released pending trial. On an unspecified date in 1998 the second applicant went abroad.

8. On 3 July 1998 the Diyarbakır State Security Court, composed of three judges including a military judge, delivered its judgment. The court found the applicants guilty of aiding and abetting an illegal organisation and sentenced them to three years and nine months' imprisonment, pursuant to Article 169 of the Criminal Code. The applicants appealed.

9. In the meantime, on 18 June 1999 the Constitution was amended and the military judges sitting on the bench of the State Security Courts were replaced by civilian judges.

10. On 14 October 1999 the Court of Cassation quashed the judgment of the Diyarbakır State Security Court.

11. On 30 December 1999 the Diyarbakır State Security Court, composed of three civilian judges, recommenced the trial of the applicants. The court further decided to summon all the accused, including the applicants, to the next hearing to submit their views on the Court of Cassation's decision.

12. During the proceedings, the court repeatedly summoned the applicants; however, the second applicant did not respond. As a result, on 24 December 2002 the Diyarbakır State Security Court decided that the file concerning the second applicant be separated and given another file number. It further found the first applicant guilty of membership of a terrorist organisation and sentenced him to twelve years and six months' imprisonment pursuant to Article 168 of the Criminal Code.

13. On 10 April 2003 the Court of Cassation held that the first applicant's prison sentence should be recalculated and quashed the judgment of the Diyarbakır State Security Court.

14. On 30 September 2003 the Diyarbakır State Security Court recalculated the first applicant's prison sentence and decided that he should be sentenced to eight years and four months' imprisonment. This decision became final on 26 February 2004.

15. On 7 May 2004 State Security Courts were abolished following a constitutional amendment and the second applicant's case was transferred to the Diyarbakır Assize Court.

16. On 14 July 2006 the court ordered an arrest warrant for the second applicant. According to the information in the case file, the trial is still pending before the Diyarbakır Assize Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

17. The applicants complained that the length of their police custody exceeded the reasonable time, in breach of Article 5 § 3 of the Convention.

18. The Court notes that the applicants' police custody ended on 9 July 1992 and 8 June 1992 respectively. However, the application was lodged with the Court on 20 November 2002, which is more than six months from the date of the facts giving rise to the alleged violation.

19. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

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

A. Independence and impartiality of the Diyarbakır State Security Court

20. The applicants maintained under Article 6 of the Convention that they were not tried by an independent and impartial court due to the presence of a military judge on the bench of the Diyarbakır State Security Court.

21. The Government referred to the constitutional amendment of 1999 whereby military judges could no longer sit on such courts.

22. The Court observes that the criminal proceedings against the second applicant are still pending before the Diyarbakır Assize Court. His complaint is therefore premature and should be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

23. As regards the first applicant, the Court recalls that it has examined similar cases in the past and has concluded that there was a violation of Article 6 § 1 of the Convention (see *Özel v. Turkey*, no. 42739/98, §§ 33-34, 7 November 2002 and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003). However, the present application may be distinguished for the following reasons.

24. The Court notes that although the first applicant was convicted by the Diyarbakır State Security Court, whose composition included a military judge, this judgment was subsequently quashed by the Court of Cassation on 14 October 1999. In the meantime, while the appeal proceedings were pending, in 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. As a result, following the decision of the Court of Cassation, the first applicant was tried afresh before the Diyarbakır State Security Court, which was composed of three civilian judges with all of the procedural safeguards provided for by the ordinary criminal procedure (see *Yaşar v. Turkey* (dec.), no. 46412/99, 31 March 2005; *Tarlan v. Turkey* (dec.), no. 31096/02, 30 March 2006 and *Pakkan v. Turkey*, no. 13017/02, §§ 33-34, 31 October 2006).

25. In the light of the foregoing, the Court finds that the first applicant's complaint concerning the independence and impartiality of the Diyarbakır State Security Court should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Length of the proceedings

26. The applicants 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...”

27. The Government submitted that the case was complex, as the proceedings included 49 accused and the charges they faced were very serious. It was therefore difficult to gather the evidence and determine the facts. They also maintained that the applicants and their lawyer did not attend many hearings. Finally, the second applicant contributed to the length of the proceedings by absconding.

1. Admissibility

28. The Court notes that this complaint 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.

2. The period to be taken into consideration

i. In respect of the first applicant

29. The period to be taken into consideration began on 27 June 1992 with the first applicant's arrest and ended on 30 September 2003 with the decision of the Diyarbakır State Security Court. It thus lasted eleven years and three months for five levels of jurisdiction in respect of the first applicant.

ii. In respect of the second applicant

30. The Court notes that the proceedings in respect of the second applicant commenced on 24 May 1992 with his arrest and are still pending. They have therefore lasted more than fifteen years for three levels of jurisdiction. However, the Court observes that the second applicant left the country during 1998 while his trial was still pending and failed to return when the proceedings resumed. It recalls that the flight of an accused person has in itself certain repercussions on the scope of the guarantee provided by Article 6 § 1 of the Convention as regards the duration of proceedings. When an accused person absconds, it may be assumed that he or she is not entitled to complain of the unreasonable duration of proceedings following that flight, unless sufficient reason can be shown to rebut this assumption (see *Ventura v. Italy*, no. 7438/76, Commission's report of 15 December 1980, Decisions and Reports (DR) 23, p. 91, § 197). However, in the absence of any concrete indication that the applicant was avoiding being brought to justice in his own country in the initial stages of his absence, the relevant period must be regarded as having ended on 30 December 1999, the day on which the Diyarbakır State Security Court summoned the second applicant to the next hearing to submit his views on the Court of Cassation's decision and following which the applicant failed to appear (see *Vayiç v. Turkey*, no. 18078/02, § 44, ECHR 2006-... (extracts)). The relevant period to be taken into account is therefore over seven years and six months for two levels of jurisdiction.

3. Merits

31. 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

32. 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).

33. 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.

III. 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.”

A. Damage

35. The applicants claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

36. The Government contested the claim.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. In respect of non-pecuniary damage, ruling on an equitable basis, it awards the first applicant EUR 2,400 and the second applicant EUR 1,800.

B. Costs and expenses

38. Referring to the Diyarbakır Bar Association's scale of fees, the applicants' representative claimed 10,100 New Turkish liras (YTL) (approximately EUR 5,800) for 26 hours' legal work, spent in the preparation and presentation of this case before the Court.

39. The Government contested the claim.

40. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 to the applicants under this head.

C. Default interest

41. 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 complaint 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;
3. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with 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 and free of any taxes or charges that may be payable:
 - (i) EUR 2,400 (two thousand four hundred euros) to the first applicant in respect of non-pecuniary damage;
 - (ii) EUR 1,800 (one thousand eight hundred euros) to the second applicant in respect of non-pecuniary damage;
 - (iii) EUR 1,500 (one thousand five hundred euros) jointly to the applicants in respect of costs and expenses;
 - (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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President