



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

THIRD SECTION

CASE OF MEHMET REŞİT ARSLAN v. TURKEY

(Application no. 31320/02)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Mehmet Reşit Arslan v. Turkey,

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

Boštjan M. Zupančič, *President*,

Corneliu Bîrsan,

Rıza Türmen,

Alvina Gyulumyan,

Egbert Myjer,

David Thór Björgvinsson,

Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 31320/02) 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 Mehmet Reşit Arslan (“the applicant”), on 21 August 2001.

2. The applicant was represented by Ms S. Gürcan, 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 complaints concerning the alleged ill-treatment of the applicant and the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, the Court 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 1966 and was serving a prison sentence in Diyarbakır prison at the time of his application to the Court.

5. On 4 April 1993 the applicant was taken into custody by police officers from the Anti-Terrorist Branch of the Istanbul Security Directorate on suspicion of membership of an illegal organisation the PKK (the

Kurdistan Workers' Party). According to the arrest report, the applicant resisted the arrest and the police officers had to use force to apprehend him.

6. On 19 April 1993 the applicant was brought before the investigating judge at the Istanbul State Security Court, where he denied the allegations against him. The judge ordered the applicant's detention on remand.

7. On 29 April 1993 the applicant was examined by a doctor at the Sağmalcılar State Hospital who noted that there was a restriction in the functioning of the right shoulder and elbow.

8. On 4 May 1993 a doctor from the Eyüp Forensic Medicine Institute drew up a report, according to which there were numerous ecchymoses and lesions on the various parts of the applicant's body and there was a reduced functioning of the right arm.

9. In a further report dated 9 July 1993, it was concluded that the injuries on the applicant's body rendered him unfit for work for ten days.

10. On 5 May 1993 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant, along with twenty-seven other persons, charging him with membership of an illegal organisation under Article 168 § 1 of the Criminal Code.

11. On 12 July 1993 the applicant maintained before the Istanbul State Security Court that his statements had been taken under torture while in police custody. At the end of the hearing, the court concluded that the applicant's representative could file a complaint with the authorities about the applicant's allegations of ill-treatment.

12. On 22 January 1997 the public prosecutor proposed to alter the charge against the applicant to treason against the integrity of the State, a capital offence under Article 125 of the Criminal Code.

13. Between 12 July 1993 and 6 March 2000 the first-instance court held forty-six hearings. The applicant did not attend twenty-eight of them.

14. On 6 March 2000 the applicant submitted his final defence submissions to the court. In his petition, the applicant denied the charges against him. Repeating his allegations of torture, the applicant maintained that he had been hung from his arms during his police custody.

15. On the same day, the Istanbul State Security Court found the applicant guilty as charged and sentenced him to the death penalty under Article 125 of the Criminal Code. The death penalty was commuted to a life sentence. In its judgment, the first-instance court did not list the applicant's statements taken by the police as evidence, having regard to the doctors' reports. It nevertheless convicted the applicant holding that other evidence corroborated his statements to the police.

16. The applicant appealed. In his petition, he maintained that the judgment of the first-instance court was based on his police statements which had been taken under torture.

17. On 21 March 2001 the Court of Cassation upheld the judgment of 6 March 2000.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

18. The applicant alleged that he had been ill-treated during his police custody between 4 and 19 April 1993.

19. The Government argued that this complaint should be declared inadmissible on account of the applicant's failure to comply with the admissibility conditions contained in Article 35 § 1 of the Convention.

20. In the first place, they stated that the applicant could not be considered to have exhausted domestic remedies since he had never filed a formal complaint with the public prosecutor in respect of his ill-treatment allegations during police custody.

21. Secondly, the Government contended that the applicant failed to comply with the six months rule. In their view, the fact that the authorities would take no action in respect of his ill-treatment allegation must have become gradually apparent to the applicant before the decision of the Court of Cassation.

(a) Exhaustion of domestic remedies

22. The Court notes that, contrary to the Government's assertion, the applicant can be considered to have brought the substance of his complaint to the notice of the Istanbul State Security Court on 12 July 1993 during the first hearing. In the Court's opinion this submission should have been sufficient in itself to alert the authorities to the need to investigate the applicant's complaint. Having regard to these circumstances, the Court considers that the applicant can be considered to have done all that could be expected of him to bring his complaint to the attention of the authorities with a view to the opening of an investigation into his allegation (see *Veznedaroğlu v. Turkey* (dec.), no. 32357/96, 7 September 1999). Accordingly, this part of the Government's objections should be dismissed.

(b) Six months time-limit

23. As regards the Government's objection concerning the applicant's failure to comply with the six months rule, the Court reiterates that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being in an uncertain situation for a prolonged period of time (see *Kenar v. Turkey* (dec.), no. 67215/01, 1 December 2005). The Court further recalls that under Article 35 § 1 of the Convention it may only deal with a matter within a period of six months from the date on which the final decision was taken in domestic

proceedings. However, special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Hazar and others v. Turkey*, (dec.) no. 62566/00, 10 January 2002).

24. The Court observes that, at the hearing held on 12 July 1993, the applicant submitted his allegations of ill-treatment to the Istanbul State Security Court. At the end of the hearing, the domestic court held that the applicant's lawyer could lodge a complaint with the domestic authorities in respect of these allegations. It is also noted that, in the applicant's appeal petition, he had argued that his conviction was based on his police statements which had been taken under torture. The Court observes that throughout the criminal proceedings, and subsequently before the Court, the applicant's claims that his statements in police custody were taken under duress and torture were made without giving any descriptions or details as to the kind of ill-treatment to which he had allegedly been subjected. It was only in his defence submissions dated 6 March 2000 that the applicant stated that he had been hung from his arms.

25. In the particular circumstances of the present case, the Court considers that the failure of the judicial authorities to act must have become gradually apparent to the applicant up until 6 March 2000, i.e. the date on which the Istanbul State Security Court rendered its decision on the matter, and that therefore the applicant should have been aware of the ineffectiveness of remedies in domestic law by that date. Accordingly, the six months' period provided for in Article 35 of the Convention should be considered to have started running not later than 6 March 2000 (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003; *Kenar*, cited above). However, the application was introduced with the Court on 21 August 2001, more than six months later.

26. It follows that this part of the application has been introduced out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention

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

27. 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..."

28. The Government contested that argument.

29. The period to be taken into consideration began on 4 April 1993 with the applicant's arrest and ended on 21 March 2001 with the decision of the Court of Cassation. It thus lasted approximately eight years for two levels of jurisdiction.

A. Admissibility

30. The Government argued that the applicant did not exhaust the domestic remedies, as he failed to raise his complaint before the national courts.

31. The Court reiterates that the obligation to exhaust domestic remedies only requires that an applicant make normal use of effective and sufficient remedies; that is, those capable of remedying the situation at issue and affording redress for the breaches alleged.

32. It observes that the Turkish legal system does not provide any remedies to accelerate the proceedings. Nor does it award any compensation for delay. The Court accordingly concludes that there was no appropriate and effective remedy which the applicant should have exercised for the purposes of Article 35 § 1 of the Convention (see *Mete v. Turkey*, no. 39327/02, §§ 18-19, 25 October 2005). It therefore rejects the Government's preliminary objection.

33. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The Government submitted that the case was rather complex, having regard to the number of the accused and the charges they faced, which made it difficult to gather evidence and determine the facts. Moreover, no negligence or delay could be imputed to the judicial authorities. They further maintained that the applicant had contributed to the length of the proceedings by refusing to attend twenty-eight hearings.

35. 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)

36. 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).

37. The Court observes that the applicant did not appear before the trial court on a number of occasions. However, it is of the opinion that the

applicant's absence from some of the hearings cannot justify the overall length of the proceedings (see, *Osman v. Turkey*, no. 4415/02, § 23, 19 December 2006.)

38. Recalling that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see *Arvelakis v. Greece*, no. 41354/98, § 26, 12 April 2001), the Court considers that the trial court should have applied stricter measures to speed up the proceedings. It therefore finds that the instant case was unnecessarily prolonged as the State Security Court failed to act with the necessary diligence.

39. 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

40. 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.”

41. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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;

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Boštjan M. Zupančič
President