



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

THIRD SECTION

CASE OF VOLKAN ŞAHİN v. TURKEY

(Application no. 34400/02)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Volkan Şahin v. Turkey,

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

Josep Casadevall, *President*,

Rıza Türmen,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 34400/02) 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, Volkan Şahin (“the applicant”), on 6 August 2002.

2. The applicant was represented by Mr Ayhan Akyiğit, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 6 May 2004 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the proceedings and the lack of remedies in that respect, as well as the complaint concerning non-communication to the applicant of the submissions of the principal public prosecutor. On 8 September 2006 it decided to rule on the admissibility and merits of the application at the same time, pursuant to Article 29 § 3 of the Convention.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1965 and lives in Antalya.

5. On 23 March 1993 a certain H.I. lodged a criminal complaint with the Marmaris public prosecutor against the applicant and a certain S.K.,

accusing them of forging a bond. The prosecutor initiated an investigation and questioned the applicant on 17 May 1993.

6. Once the preliminary investigation was completed and the necessary evidence was obtained, a prosecutor in Ankara filed an indictment with the Ankara Assize Court (hereinafter “the trial court”) on 21 April 1995 and requested that the applicant and S.K. be punished in accordance with Article 342 § 1 of the Criminal Code for the offence of forgery.

7. Thirteen hearings were held by the trial court between 1 May 1995 and 12 September 1997 in the absence of the applicant. At each of these hearings the trial court noted the authorities’ failure to locate the applicant’s address. According to the applicant, the reason for his absence from those hearings was that he had not been informed about the trial. On 13 May 1996 the applicant’s co-accused S.K. was acquitted for lack of sufficient evidence. The trial court decided to continue the proceedings against the applicant.

8. A lawyer representing the applicant attended the 14th hearing on 21 November 1997 but, as the applicant was unable to pay his fees, the lawyer discontinued representing him. On 26 March 1998 the authorities were able to find the applicant and question him. In the course of the questioning the applicant denied the accusations against him. He attended the 18th hearing, held on 28 May 1998.

9. During the 19th hearing, held on 22 June 1998, the trial court acquitted the applicant for lack of sufficient evidence. On 16 September 1998 the public prosecutor appealed against the acquittal. On 11 November 1999 the Court of Cassation quashed the decision and referred the case to the trial court for a new trial.

10. On 11 April 2000, during its first hearing in the new trial, the trial court convicted the applicant as charged and sentenced him to one year and eight months’ imprisonment. The applicant appealed.

11. On 22 October 2001 the Principal Public Prosecutor at the Court of Cassation submitted his written observations to the Court of Cassation. These observations were not communicated to the applicant. On 13 February 2002, after having held a hearing, the Court of Cassation upheld the trial court’s decision.

THE LAW

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

1. Complaint concerning the length of the criminal proceedings

12. 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...”

13. The Government contested that argument.

14. The Court considers that the period to be taken into consideration began on 17 May 1993 when the applicant was questioned by the prosecutor, and ended on 13 February 2002 when the Court of Cassation upheld his conviction. It thus lasted almost eight years and nine months for two levels of jurisdiction.

A. Admissibility

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

16. The applicant did not deal specifically with this issue other than to dispute, in general terms, the arguments of the Government.

17. The Court observes that in previous cases it has already examined and rejected 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 case. It therefore rejects the Government’s objection under this head.

18. 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.

B. Merits

19. The Government argued that the applicant had contributed to the delay by failing to attend a large number of hearings. The authorities had

done everything possible to ensure the applicant's attendance at those hearings.

20. The applicant maintained that the prosecutor's indictment of 21 April 1995 had not been communicated to him and, as such, he was not aware of the criminal proceedings against him.

21. 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, and 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).

22. The Court does not consider the subject matter of the case to be complex. However, the applicant's absence from the hearings held between 1 May 1995 and 21 November 1997 – that is, a period of over two and a half years – undoubtedly contributed to the total length of the proceedings.

23. According to the Government, the reason for the applicant's failure to attend the hearings had been his intention to remain at large until the statute of limitations for the offence was reached. The applicant had thus hoped to avoid being prosecuted. According to the applicant, on the other hand, the reason had been the failure of the authorities to inform him about the trial.

24. The Court does not deem it important to examine the accuracy of the parties' submissions on this matter since it considers that the applicant, who claims to have been unaware of the trial for the period referred to above (see paragraph 22 above), cannot claim to have been affected by the proceedings against him for that period. It therefore disregards this period from its examination of the total length of the criminal proceedings.

25. As regards the conduct of the authorities, the Court observes that the Government did not offer any explanation as to why it had taken the prosecutor, who questioned the applicant on 17 May 1993 (see paragraph 5 above), almost two years to prepare and file his indictment (see paragraph 6 above).

26. Similarly, no explanation was put forward by the Government for the time taken by the Court of Cassation to examine the appeals. In this connection the Court notes that it took the Court of Cassation almost one year and two months to decide the appeal lodged by the prosecutor against the applicant's acquittal (see paragraph 9 above). Furthermore, the appeal lodged by the applicant against his conviction was not decided by the Court of Cassation for a period of almost two years (see paragraphs 10-11 above).

27. In light of the foregoing, 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.

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

2. Complaint concerning the non-communication of the prosecutor's observations

29. The applicant complained that the written opinion of the Principal Public Prosecutor at the Court of Cassation had not been served on him, thus depriving him of the opportunity to put forward his counter-arguments. He relied on Article 6 § 3 (b) of the Convention.

30. The Court considers that this complaint should be examined from the standpoint of Article 6 § 1, which in so far as relevant provides:

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

A. Admissibility

31. 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.

B. Merits

32. The Government argued, in particular, that the applicant's representative, who attended the hearing before the Court of Cassation, could have examined the Principal Public Prosecutor's observations before the hearing and could have challenged them.

33. The applicant maintained his allegations.

34. The Court notes that it has already examined the same grievance in the past and has found a violation of Article 6 § 1 of the Convention (see, in particular, *Göç v. Turkey*, [GC], no. 36590/97, § 55, ECHR 2002-V; *Sağır v. Turkey*, no. 37562/02, § 26, 19 October 2006; and *Ayçoban and Others v. Turkey*, nos. 42208/02, 43491/02 and 43495/02, 22 December 2005).

35. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned cases.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant further complained about the lack of a remedy by which he could have challenged the excessive length of the proceedings. He relied on Article 13 of the Convention which provides as follows:

“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.”

38. The Government contested that argument.

39. The Court notes that this complaint is linked to the complaint concerning the reasonable time requirement examined above and must therefore likewise be declared admissible.

40. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

41. The Court observes that the Turkish legal system does not provide any remedies to accelerate proceedings or to provide litigants with adequate redress for delays that have already occurred. As such, the applicant in the present case did not have any rights to compel any authority to exercise its supervisory jurisdiction over the trial court to expedite the proceedings (see *Tendik and Others v. Turkey*, no. 23188/02, §§ 34-39, 22 December 2005, and the cases cited therein).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 150,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

45. The Government contested the applicant’s claims.

46. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant also claimed 81 US dollars and 139,977,266 Turkish liras for the costs and expenses incurred before the domestic courts and EUR 2,600 for those incurred before the Court. At the time of the

submission of his claims, the sums requested by the applicant in respect of his costs and expenses incurred before the domestic courts amounted to approximately EUR 137.

48. The Government contested those claims.

49. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are 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 1,000 covering costs under all heads.

C. Default interest

50. 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 on account of the length of the criminal proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-communication of the public prosecutor's written opinion to the applicant;
4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of a remedy in respect of the length of the criminal proceedings;
5. *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, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President