



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

SECOND SECTION

CASE OF DEMİRCİ v. TURKEY

(Application no. 21843/02)

JUDGMENT

STRASBOURG

3 June 2008

FINAL

03/09/2008

This judgment may be subject to editorial revision.

In the case of Demirci v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Ayşe Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 13 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 21843/02) 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 Doğan Demirci (“the applicant”), on 4 March 2002.

2. The applicant was represented by Mr N. Değirmenci and Mrs B. Değirmenci, lawyers practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 7 June 2007 the Court decided to give notice of the application 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1977 and lives in İzmir.

5. On 26 March 1997 the applicant was arrested and taken into custody. He was accused of having thrown a Molotov cocktail at a building. He was remanded in custody on 27 March 1997.

6. On 2 April 1997 the İzmir public prosecutor filed a bill of indictment with the İzmir Assize Court, accusing the applicant of extortion and of

preparing a bomb. He requested that the applicant be convicted and sentenced under Articles 495 § 1 and 264 § 6 of the Criminal Code.

7. On 18 September 1997 the applicant was released pending trial.

8. On 28 June 1999 the İzmir Assize Court convicted the applicant as charged and sentenced him, in total, to six years, eleven months and ten days' imprisonment, and to a fine.

9. On 7 May 2001, the principal public prosecutor at the Court of Cassation submitted his written opinion to the latter. He considered that the judgment of the first-instance court should be upheld. This opinion was not communicated to the applicant.

10. On 26 September 2001 the Court of Cassation held a hearing and upheld the judgment of the first-instance court.

11. On 24 October 2007 the President of the 6th Criminal Chamber of the Court of Cassation informed the Court of Cassation that, in accordance with domestic law, the principal public prosecutor was not present at the deliberations of the Chamber.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice in force at the material time are outlined in the Göç v. Turkey judgment ([GC], no. 36590/97, § 34, ECHR 2002-V).

13. According to Section 40 § 1 of Law no. 2797 the deliberations of chambers before the Court of Cassation are secret. Each chamber is composed of one president and four members.

14. On 2 January 2003 Article 316 of the Code of Criminal Procedure Law was amended to provide that the written opinion of the principal public prosecutor at the Court of Cassation be notified to the parties.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. The applicant complained that the non-communication of the principal public prosecutor's written opinion to him infringed the right to a fair trial, resulting from the failure to respect the principle of equality of arms. He further alleged that the fairness of the proceedings had been undermined by the attendance of the prosecutor at the deliberations of the Court of Cassation and the length of the proceedings. He relied on Article 6 of the Convention, which in so far as relevant, read as follows:

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

A. Admissibility

16. The Court notes that the applicant’s complaint concerning the non-communication to the applicant of the principal public prosecutor’s written opinion at the Court of Cassation 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.

17. In the light of all the materials in its possession, the Court finds that the applicant’s remaining complaints under Article 6 do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that they must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

B. Merits

18. The Government maintained, in particular, that the applicant or his lawyer had the right to consult the case file before the Court of Cassation and thereby discover the contents of the document concerned. In addition, they argued that, since the impugned opinion had been read out at the hearing, the applicant’s lawyer had had the opportunity to respond to it or request additional time to prepare his counter-arguments.

19. 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*, cited above, § 55; *Söğüt v. Turkey*, nos. 16593/03 and 16600/03, §§ 21-22, 31 May 2007; *Sağır v. Turkey*, no. 37562/02, § 26, 19 October 2006; *Özmen and Others v. Turkey*, no. 9149/03, §§ 25-26, 14 June 2007; *Ayçoban and Others v. Turkey*, nos. 42208/02, 43491/02 and 43495/02, § 28, 22 December 2005).

20. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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.”

23. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part.”

24. In the instant case, on 26 November 2007 the Court invited the applicant to submit his claims for just satisfaction by 10 January 2008. However, he did not submit any such claim within the specified time-limit.

25. In view of the above, the Court makes no award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the non-communication to the applicant of the principal public prosecutor’s written opinion 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 3 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President