



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

SECOND SECTION

CASE OF ASLAN AND DEMİR v. TURKEY

(Applications nos. 38940/02 and 5197/03)

JUDGMENT

STRASBOURG

17 February 2009

FINAL

17/05/2009

This judgment may be subject to editorial revision.

In the case of Aslan and Demir 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 38940/02 and 5197/03) 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 Mahmut Aslan and Mr Hüseyin Demir (“the applicants”), on 13 July 2000 and 12 November 2002 respectively.

2. The applicants were represented by Mr E. Talay and Mr M. Taş respectively, lawyers practising in Diyarbakır and Elazığ. The first applicant was granted legal aid. The Turkish Government (“the Government”) were represented by their Agent.

3. On 1 June 2006 and 20 November 2007 respectively, the Court declared the applications partly inadmissible and decided to communicate to the Government the complaint concerning the lack of legal assistance to the applicants during their police custody. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

4. The applicants were born in 1974 and 1960 respectively and live in Turkey. The facts common to these cases are that the applicants were arrested and placed in custody in different times and places. During their custody period, they were interrogated by the police, the public prosecutor and the investigating judge respectively, in the absence of a lawyer. These statements were subsequently used for their convictions by the trial court.

5. The details concerning the two applications are indicated in the table below.

Application no. and case name	Dates of police custody	Date of interrogation by the police	Date of interrogation by the public prosecutor and the investigating judge	Date of final decision by the Court of Cassation
38940/02 Mahmut Aslan	19/6/1999 to 25/6/1999	25/6/1999	25/6/1999	19/12/2000
5197/03 Hüseyin Demir v. Turkey	28/1/2000 to 3/2/2000	2/2/2000	3/2/2000	2/7/2002

THE LAW

6. In view of the similarity of the applications, the Court finds it appropriate to join them.

7. Relying on Article 6 §§ 1 and 3 (c) of the Convention, the applicants complained that they had been denied the assistance of a lawyer while in police custody.

8. The Court notes that this remaining complaint of the applicants 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.

9. As regards the merits, the Court observes that it has already examined the same grievance in the case of *Salduz v. Turkey* and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 ([GC], no. 36391/02, §§ 56-62, 27 November 2008). In that judgment, the Court held that, the restriction imposed on the right of access to a lawyer was systematic and applied to anyone held in police custody during that period, regardless of his or her age, in connection with an offence falling within the jurisdiction of the State Security Courts.

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

11. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case.

12. As regards just satisfaction under Article 41 of the Convention, the first applicant, Mahmut Aslan, claimed 30,000 euros (EUR) in respect of non-pecuniary damage. The second applicant, Hüseyin Demir, claimed EUR 10,800 in respect of pecuniary damage. Referring to his application form, he further requested EUR 1,000,000 in respect of non-pecuniary

damage. Referring to the Diyarbakır Bar Association's scale of fees, the first applicant's representative claimed a total of EUR 2,119, covering the time spent in the preparation and presentation of this case before the Court, and other costs and expenses. The second applicant did not make any request under this head. The Government contested the claims.

13. 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 EUR 1,500 to each of the applicants.

14. The Court further considers that the most appropriate form of redress would be the re-trial of the applicants in accordance with the requirements of Article 6 § 1 of the Convention, should the applicants so request (see, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Salduz*, cited above, § 72).

15. According to its relevant case-law, in respect of costs and expenses, the Court considers it reasonable to award the sum of EUR 1,000 to the first applicant less the sum of EUR 850 received in legal aid from the Council of Europe.

16. The Court further finds 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. *Decides* to join the applications;
2. *Declares* the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1, on account of the lack of legal assistance to the applicants while in police custody;
4. *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 Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) to the first applicant, Mahmut Aslan, less the EUR 850 (eight hundred and fifty euros) received in

legal aid, 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;

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

Done in English, and notified in writing on 17 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President