



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ATSIZ AND OTHERS v. TURKEY

(Application no. 7987/07)

JUDGMENT

STRASBOURG

23 June 2009

FINAL

23/09/2009

This judgment may be subject to editorial revision.

In the case of Atsız and Others 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 Françoise Elens-Passos, *Deputy Section Registrar*.

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 7987/07) 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 five Turkish nationals, Mr Sedat Atsız, Mr Mehmet Emin Türk, Mr Şerefettin Türk, Mr Mahfuz Sığınç and Mr Orhan Sakci (“the applicants”), on 26 January 2007.

2. The applicants were represented by Mr S. Yurtdaş, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 June 2008 the Court declared the application partly inadmissible and decided to give notice to the Government of the complaints concerning the applicants’ right to be released pending trial and the length of the proceedings. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicants were born in 1970, 1970, 1966, 1974 and 1970 respectively, and live in Diyarbakır.

5. The applicants were taken into custody on the following dates: the fifth applicant on 6 January 1994, the first three applicants on 9 March 1994, and the fourth applicant on 19 March 1994. The applicants were arrested on suspicion of membership of the PKK (the Kurdistan Workers’ Party), an illegal organisation.

6. On 20 January 1994 a single judge at the Muş Magistrates' Court remanded the fifth applicant in custody.

7. On 31 March 1994 a single judge at the Muş Magistrates' Court remanded the other applicants in custody.

8. On 16 March 2004 the Diyarbakır State Security Court convicted the applicants of carrying out activities for the purpose of bringing about the secession of part of the national territory under Article 125 of the former Criminal Code, and sentenced them to life imprisonment.

9. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. The case against the applicants was transferred to the Diyarbakır Assize Court.

10. On 6 June 2005 the Court of Cassation quashed the judgment of 16 March 2004 in respect of the applicants and remitted the case to the first-instance court.

11. On 16 November 2007 the Diyarbakır Assize Court convicted the applicants under Article 125 of the former Criminal Code and again sentenced them to life imprisonment.

12. On 20 January 2008 the applicants appealed.

13. According to the information in the case file, the case is still pending before the Court of Cassation.

THE LAW

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

14. The applicants complained that their detention during the judicial proceedings had exceeded the "reasonable time" requirement of Article 5 § 3 of the Convention.

15. The Government contested that argument and maintained that the length of the applicants' pre-trial detention had been reasonable.

16. 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.

17. As regards the merits of this part of the application, the Court observes that there were two periods of detention in the present case.

18. The first period began when the applicants were taken into police custody:

- on 9 March 1994 for the first three applicants,
- on 19 March 1994 for the fourth applicant, and
- on 6 January 1994 for the fifth applicant.

It ended on 16 March 2004, when the Diyarbakır State Security Court convicted them. From that point on, until the Court of Cassation's decision of 6 June 2005, the applicants were detained "after conviction by a competent court", which falls within the scope of Article 5 § 1 (a) of the Convention. The first period thus lasted over ten years for all the applicants.

19. The second period began on 6 June 2005, when the Court of Cassation quashed the first-instance court's judgment and ended on 16 November 2007 when the Diyarbakır Assize Court convicted the applicants for a second time. It thus lasted approximately two years and five months.

20. The total length of the applicants' pre-trial detention was, therefore, approximately twelve years and five months.

21. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present application (see, for example, *Tutar v. Turkey*, no. 11798/03, §§ 16-20, 10 October 2006, and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, ECHR 2007-...).

22. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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 finds that the length of the applicants' detention during the judicial proceedings was excessive and contravened Article 5 § 3 of the Convention.

23. There has accordingly been a violation of this provision.

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

24. 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.

A. As regards the fifth applicant (Mr Orhan Sakci)

25. The Government maintained that Mr Sakci had introduced the same complaint to the Court on 3 January 2002 (application no. 8147/02), which had resulted in the finding of a violation of Article 6 § 1 of the Convention on 16 January 2007. The Government, therefore, requested the Court to declare his length of proceedings complaint inadmissible in accordance with Article 35 § 2 (b) of the Convention.

26. The applicant contended that his application contained new information and complaints which had not been previously examined by the Court in application no. 8147/02.

27. The Court notes that the present application was submitted to the Court on 26 January 2007, i.e. after the adoption of the judgment on application no. 8147/02. In these circumstances, the Court considers that it is precluded by Article 35 § 2 (b) of the Convention from ruling upon the

complaint under Article 6 § 1 of the Convention in as much as it was already examined within the context of application no. 8147/02. The Court, however, may examine this complaint in relation to the period that has elapsed after the adoption of the initial judgment, i.e. the period after 16 January 2007. The Court, therefore, dismisses the Government's preliminary objection in this regard. The Court, however, considers that this complaint should be declared inadmissible for other reasons.

28. The Court notes in this regard that the period to be taken into consideration began on 16 January 2007, when the Court found a violation of Article 6 § 1 of the Convention in application no. 8147/02 on account of the excessive length of the criminal proceedings against the applicant and is still continuing, as the case is pending before the Court of Cassation. Thus, the period under consideration is already over two years and one month before two instances: ten months before the Diyarbakır Assize Court and the rest before the Court of Cassation.

29. The Court observes that the case was one of a certain complexity, having regard, in particular, to the seriousness of the charges brought against the applicant. However, examining the overall duration of the subsequent proceedings under consideration – a period which does not seem *prima facie* unduly long in the light of the case-law of the Convention organs – and taking into account the judgment adopted on 16 January 2007 by the Court in relation to application no. 8147/02, where a violation of Article 6 § 1 of the Convention was found as regards the proceedings which had lasted approximately fourteen years at that point, the Court considers that the remaining length of the proceedings has not been excessive (see *Mariniello v. Italy* (dec.), no. 36012/97, 28 September 1999, and *Koştı and Others v. Turkey*, no. 74321/01, §§ 32-37, 3 May 2007).

30. It follows that the complaint under Article 6 § 1 as regards the length of the proceedings against the fifth applicant is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. As regards the remaining applicants

31. The Government maintained that, in the circumstances of the present case, the length of the criminal proceedings could not be considered unreasonably long.

32. The applicants maintained their allegations.

33. The Court notes that this part of the application 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.

34. As regards the merits of this part of the application, the Court observes that the period to be taken into consideration began on 9 March

1994 for the first three applicants and on 19 March 1994 for the fourth applicant, when they were taken into police custody and is still continuing as the proceedings are pending before the Court of Cassation. The period under consideration has thus already lasted over fifteen years and two months before two instances.

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Akyol v. Turkey*, no. 23438/02, §§ 39-45, 20 September 2007).

36. 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 application. Having regard to its case-law on the subject, the Court considers that the length of the proceedings against the first, second, third and fourth applicants 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

37. The applicants claimed 250,000 euros (EUR) in respect of pecuniary damage and EUR 250,000 in respect of non-pecuniary damage.

38. The Government contested these claims.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards each of the first four applicants EUR 17,250 and the fifth applicant EUR 10,500 in respect of non-pecuniary damage.

40. Furthermore, according to the information submitted by the parties, the criminal proceedings against the applicants are still pending. In these circumstances, the Court considers that an appropriate means for putting an end to the violation of Article 6 § 1 of the Convention which it has found would be to conclude the criminal proceedings in issue as speedily as possible, while taking into account the requirements of the proper administration of justice (see, *mutatis mutandis*, *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007).

41. The applicants also claimed EUR 10,000 for legal fees and costs and expenses incurred before the Court, such as stationery, translation and transport expenses. The applicants submitted two bank receipts in the amounts of 166 Turkish liras (TRY) (approximately EUR 75) and TRY 210 (approximately EUR 95) to substantiate their translation expenses.

42. The Government contested this claim.

43. 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 were reasonable

as to quantum. In the present case, the applicants have not substantiated that they had actually incurred much of the costs so claimed. The Court therefore only awards EUR 170 to the applicants, jointly, in respect of their documented costs and expenses.

C. Default interest

44. 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* admissible the complaint concerning the detention during judicial proceedings as regards all the applicants, as well as the complaint concerning the excessive length of the proceedings as regards all applicants except for the fifth (Mr Orhan Sakci);
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards all the applicants;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards Mr Sedat Atsız, Mr Mehmet Emin Türk, Mr Şerefettin Türk and Mr Mahfuz Sığınç;
5. *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 17,250 (seventeen thousand two hundred and fifty euros), plus any tax that may be chargeable, to each of the four applicants - Mr Sedat Atsız, Mr Mehmet Emin Türk, Mr Şerefettin Türk and Mr Mahfuz Sığınç - in respect of non-pecuniary damage;
 - (ii) EUR 10,500 (ten thousand five hundred euros), plus any tax that may be chargeable, to Mr Orhan Sakci, in respect of non-pecuniary damage;
 - (iii) EUR 170 (one hundred and seventy euros) to the applicants, jointly, plus any tax that may be chargeable to them, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President