



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ALDEMİR v. TURKEY

(Application no. 37215/04)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Aldemir 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,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 37215/04) 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 Aldemir (“the applicant”), on 17 May 2004.

2. The applicant was represented by Mr A. Ertunç, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 September 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1978 and lives in İstanbul.

5. On 27 July 2003 the applicant was stabbed by F.Ç. On the same day the police took statements from F.Ç. and the applicant separately. They were both wounded and accused each other of starting the fight. On 29 July 2003 the Bakırköy Forensic Institute delivered its reports on the applicant and F.Ç., which stated that they were unfit for work for ten and seven days respectively. On 31 July 2003 the Bakırköy Public Prosecutor filed an indictment against the applicant and F.Ç. for assault occasioning bodily harm. The indictment was not served on the applicant or F.Ç. On 21 November 2003 the Bakırköy Magistrate’s Court issued a penal order

without holding a hearing and found the applicant and F.Ç. guilty as charged. The court fined each of them 462,377,000 Turkish liras¹. In doing so, it relied on the “simplified procedure” stipulated in Article 386 of the Code of Criminal Procedure for relatively minor offences. On 14 January 2004 the applicant challenged this decision before the Bakırköy Criminal Court. On 30 January 2004 the Bakırköy Criminal Court dismissed the objection without holding a hearing.

THE LAW

6. The applicant complained that he had been unable to defend himself in person or through legal assistance, as there had been no public hearing in his case. He further stated that the indictment of the public prosecutor had not been served on him. In this respect the applicant relied on Article 6 §§ 1, 2 and 3 (a), (b) and (d) of the Convention. The Government contested these arguments.

7. The Court notes that 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.

8. The Court considers that, in the instant case, it is more appropriate to deal with the applicant’s complaints under Article 6 § 1 globally due to the overlapping nature of the issues and since the sub-paragraphs of Article 6 § 3 may be regarded as specific aspects of the general fairness guarantee of the first paragraph (see *Piroğlu and Karakaya v. Turkey*, nos. 36370/02 and 37581/02, § 38, 18 March 2008).

9. The Court reiterates that it is a fundamental principle enshrined in Article 6 § 1 that court hearings should be held in public (see, among other authorities, *Stefanelli v. San Marino*, no.35396/97, § 19, ECHR 2000-II). The Court recalls that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present applications (see, *inter alia*, *Karahanoğlu v. Turkey*, no. 74341/01, §§ 35-39, 3 October 2006; *Evrenos Önen v. Turkey*, no. 29782/02, §§ 29-33, 15 February 2007; *Nurhan Yılmaz v. Turkey (no. 2)*, no. 16741/04, §§ 22-24, 8 April 2008; *Günseli Kaya v. Turkey (no. 2)*, no. 40886/02, §§ 29- 32, 23 June 2009). It finds no reason to depart from such a conclusion in the present case. Consequently, there has been a breach of Article 6 § 1 of the Convention due to the lack of a hearing in the applicant’s case, as a result of which he was not able to participate effectively in the criminal proceedings lodged against him.

1. Approximately 264 euros at the time.

10. As regards the question of just satisfaction under Article 41 of the Convention, the applicant claimed that he could not work for a period of more than a month because of his wounds and, even then, his salary had been reduced as he could not produce as much work as before. He further asserted that he now had a criminal record which would make it difficult for him to find new jobs in the future. He thus claimed 20,000 euros (EUR) and EUR 35,000 in respect of pecuniary damage and non-pecuniary damage respectively.

With regard to the costs and expenses, the applicant claimed a total of EUR 5,000 for his medical expenses, the fine he had paid, lawyer's fees and translation costs. In this respect he submitted the lawyer's contract and a number of receipts.

11. The Government contested these claims.

12. As regards pecuniary damage, the Court notes that it cannot speculate as to what the outcome of proceedings compatible with Article 6 of the Convention would have been. Accordingly, it makes no award under this head (see *Karahanoğlu v. Turkey*, cited above).

Moreover, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

Finally, deciding on an equitable basis and considering its case-law, the Court awards the applicant EUR 1,000 for costs and expenses.

13. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, to be converted into Turkish liras at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President