



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SİNGAR v. TURKEY

(Application no. 13467/05)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Singar 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 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 13467/05) 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 Mahmut Singar (“the applicant”), on 30 March 2005.

2. The applicant was represented by Ms R. Doğan, 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 rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicant was born in 1966 and lives in Ağrı.

5. On 28 January 1995 the applicant was arrested in Istanbul on suspicion of being a member of an illegal organisation. On 15 February 1995 he was remanded in custody.

6. On 24 April 1995 the public prosecutor filed a bill of indictment against the applicant and nineteen other accused with the Istanbul State Security Court. On 2 May 1995 the trial commenced. On 10 May 2001 the applicant was released pending trial.

7. By Law no. 5190, in June 2004 State Security Courts were abolished. Subsequently, the Istanbul Assize Court acquired jurisdiction over the case.

8. On 23 October 2008 the Istanbul Assize Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time limit under Articles 102 and 104 of the Criminal Code had expired.

THE LAW

9. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of 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...”

10. The Government argued that the applicant was no longer a victim since the proceedings against him had been terminated because the statutory time-limit had expired. They further stated that the applicant had failed to exhaust domestic remedies as the criminal proceedings against him were still pending at the time when he lodged his application with the Court. Finally, referring to Article 141 of the New Criminal Procedure Code (no. 5271), they contended that the applicant could have sought a remedy under domestic law.

11. As to the Government’s first two objections, the Court reiterates that it has already examined and rejected similar objections by the Government in previous cases (see, in particular, *Mahmut Aslan v. Turkey*, no. 74507/01, § 14, 2 October 2007, in respect of the first objection, and *Tutar v. Turkey*, no. 11798/03, §§ 12-14, 10 October 2006, and *Ertürk v. Turkey*, no. 15259/02, §§ 21-22, 12 April 2005, in respect of the second objection). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned applications. It therefore rejects the Government’s objections under these heads. As to the third objection concerning Article 141 of the New Criminal Procedure Code, the Court observes that this provision provides for the possibility of compensation for those who were kept in pre-trial detention for a long time. As the present application concerns the length of the criminal proceedings, the Government’s objection cannot be upheld.

12. 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.

13. As to the merits of the complaint raised under Article 6 § 1 of the Convention, the Court observes that the period to be taken into consideration began on 28 January 1995 and ended on 23 October 2008. It thus lasted thirteen years and eight months at one level of jurisdiction. 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).

14. 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 *Pélissier and Sassi*, cited above). 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 case. The Court therefore considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

15. Concerning just satisfaction, the applicant claimed 4,285 Euros (EUR) in respect of pecuniary damage. Emphasising the length of the proceedings, he left the determination of the award for non-pecuniary damage to the discretion of the Court. The Government contested the claims. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have suffered non-pecuniary damage, such as distress and frustration, on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the present case, and ruling on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage.

16. The applicant further requested EUR 6,260 for the costs and expenses before the Court, solely referring to the Istanbul Bar Association’s scale of fees. However, 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, the applicant has not established that he actually incurred the costs claimed. Accordingly, the Court makes no award under this head.

17. 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

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;
4. *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