



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ERASLAN AND OTHERS v. TURKEY

(Application no. 59653/00)

JUDGMENT

*This version was rectified on 5 January 2011
under Rule 81 of the Rules of Court*

STRASBOURG

6 October 2009

FINAL

06/01/2010

This judgment may be subject to editorial revision.

In the case of Eraslan 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 Sally Dollé, *Section Registrar*¹,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 59653/00) 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 fourteen Turkish nationals (“the applicants”) on 5 June 2000. The applicants, whose names are indicated in the appendix, were represented by Mr T. Fırat, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

2. On 2 March 2006 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

3. On different dates, the applicants were taken into police custody in İzmir on suspicion of membership of an illegal organisation. During their police custody, they were questioned by the police, the public prosecutor and the investigating judge, without the assistance of a lawyer. They were subsequently placed in detention pending trial. On 21 November 1994 the public prosecutor at the İzmir State Security Court initiated criminal proceedings against forty-six accused persons, including the applicants. On 14 August 1997, the İzmir State Security Court, composed of three judges including a military judge, convicted the applicants as charged. On 25 June

¹ Mr Stanley Naismith succeeded Mrs Sally Dollé as section registrar on 1st July 2010.

1998 the Court of Cassation quashed the judgment of the State Security Court. Subsequently, on 2 December 1998, the Izmir State Security Court, composed of three judges, including a military judge, found the applicants guilty as charged and sentenced them to different terms of imprisonment. On 9 December 1999 the Court of Cassation, after holding a hearing on the merits of the case, dismissed requests to lodge an appeal made by the applicants. This decision was deposited with the registry of the Izmir State Security Court on 27 January 2000.

4. The details of the applicants' police custody are indicated below:-

- Abdulkadir¹ Eraslan between 29 September and 10 October 1994
- Murat Satık between 27 September and 10 October 1994
- Ali Haydar Özdemir between 28 September and 10 October 1994
- Mehmet Kışanak between 27 September and 10 October 1994
- Kadir Satık between 30 September and 10 October 1994
- Nevzat Sağnıç between 15 and 22 May 1995
- Nadir Kalkan between 28 July and 5 August 1996
- Metin Göktepe between 27 September and 10 October 1994
- Mehmet Eraslan between 27 September and 10 October 1994
- Emsihan Karatay between 28 September and 10 October 1994
- Neslihan Göktepe between 28 September and 10 October 1994
- Sayime Sefer between 6 and 7 January 1995
- Mine Neşe Sağnıç between 15 and 22 May 1995
- Fazilet Ülkü Bozkurt between 19 and 22 May 1995

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. As regards the independence and impartiality of the İzmir State Security Court

5. The applicants complained that they had not received a fair trial by an independent and impartial tribunal due to the presence of a military judge on the bench of the Izmir State Security Court which tried and convicted them.

6. 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

¹ Rectified on 5 January 2011: The applicant's name read "Abdülkadir" in the former version of the judgment.

notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

7. The Government referred to the constitutional amendment of 1999, whereby military judges sitting on the bench of the State Security Courts were removed. They further stated that as of 2004, State Security Courts had been abolished.

8. The Court observes that the applicants were convicted on 2 December 1998, before the amendments in the national law. It refers to similar cases in the past in which it has concluded that there was a violation of Article 6 § 1 of the Convention (see *Özel v. Turkey*, no. 42739/98, §§ 33-34, 7 November 2002, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003). It finds no particular circumstances which would require it to depart from this jurisprudence. There has therefore been a violation of Article 6 § 1 of the Convention in this respect.

B. As to the applicants' right to legal assistance during police custody

9. The applicants alleged that their defence rights had been violated as they had been denied access to a lawyer during their police custody. They stated that the restriction on their right to legal assistance during police custody had breached their right to a fair trial, particularly having regard to the serious charges brought against them.

10. The Government maintained, firstly, that one of the applicants, Mr Abdulkadir¹ Eraslan, had seen his lawyer on 5 October 1994. They further stated that the applicants had never requested to have the assistance of a lawyer during their police custody.

11. 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.

12. The Court observes from the documents submitted by the Government that Mr Abdulkadir¹ Eraslan was indeed able to see his lawyer on 5 October 1994 between 3 and 3.15 p.m. According to the minutes of this meeting, Mr Eraslan's lawyer asked the applicant about his health and if he needed anything. The applicant replied that he was well and did not need anything. The Court refers to its *Salduz* judgment ([GC], no. 36391/02, §§ 54-55, 27 November 2008), in which it underlined the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the

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offence charged will be considered at the trial. The Court further held that in order for the right to a fair trial to remain sufficiently “practical and effective”, Article 6 § 1 required, as a rule, access to a lawyer as from the first questioning of a suspect by the police, unless it were demonstrated in the particular circumstances of each case that there were compelling reasons to restrict this right. Having regard to the foregoing, and bearing in mind that the restriction imposed concerning access to a lawyer was systematic, pursuant to section 31 of Law no. 3842, and applied to anyone held in police custody in connection with an offence falling under the jurisdiction of the State Security Courts, the Court observes that although Mr Eraslan did meet his lawyer during his police custody, this meeting lasted for fifteen minutes and was in no way related to the applicant's defence rights. Furthermore, as regards the Government's contention that the remaining applicants did not ask to benefit from the assistance of a lawyer, the Court observes that the restriction imposed on the applicants' right of access to a lawyer was systematic and applied to anyone held in police custody in connection with an offence falling under the jurisdiction of the State Security Courts.

13. The Court observes in this connection that it has already examined the same grievance in the case of *Salduz* (cited above, §§ 56-62), and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1. There are no particular circumstances in the present case which would require the Court to depart from its findings in the aforementioned *Salduz* judgment. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1.

C. As to the length of the proceedings

14. The applicants complained that the length of the proceedings had not been compatible with the reasonable-time requirement of Article 6 § 1 of the Convention.

15. The Government stated that the length of the proceedings had not exceeded a reasonable time.

16. The Court observes that the proceedings in dispute started with the arrest of the applicants (on different dates between 27 September 1994 and 28 July 1996) and ended on 9 December 1999 with the decision of the Court of Cassation. The length of the proceedings therefore ranged from three years and four months to five years and two months, for two levels of jurisdiction. During that time, the domestic courts delivered four judicial decisions. The Court also observes that the criminal proceedings were initiated against forty-six accused persons, who were all charged with serious offences, and the domestic courts had to establish the facts in respect of each of the accused. In the particular circumstances of the case, the Court considers that the length of the criminal proceedings cannot be regarded as

having exceeded the reasonable-time requirement under Article 6 § 1 of the Convention.

17. It follows that this part of the application must be rejected for being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

18. The applicants invoked Article 14 of the Convention and stated that the difference between the procedure in the State Security Courts and the ordinary criminal courts had constituted discrimination. They further alleged, under Article 34 of the Convention, that the non-communication of the final decision of the Court of Cassation to the parties had hindered the effective exercise of their right to submit individual applications.

19. The Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. Without indicating a specific amount, the applicants requested an award of pecuniary compensation. In respect of non-pecuniary compensation, they further requested 70,000 euros (EUR) for Mr Nadir Kalkan, EUR 50,000 for Mr Abdulkadir¹ Eraslan, EUR 40,000 for Mr Murat Satik and EUR 20,000 each for the remaining applicants. They further requested EUR 10,000 in respect of costs and expenses, without submitting any documents.

21. The Government contested the claims.

22. 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 applicants must have suffered certain non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Ruling on an equitable basis, it awards them EUR 1,000 each under that head.

23. The Court further considers that the most appropriate form of redress would be the retrial of the applicants in accordance with the requirements of Article 6 § 1 of the Convention, should they so request (see, *mutatis*

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mutandis, Gençel v. Turkey, no. 53431/99, § 27, 23 October 2003, and *Salduz*, cited above, § 72).

24. In respect of costs and expenses, 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 applicants have not substantiated their contention that they actually incurred the costs claimed. Accordingly, no award shall be made under this head.

25. Finally, 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. *Declares* the complaints concerning the independence and impartiality of the Izmir State Security Court and the lack of legal assistance to the applicants during their police custody admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention regarding the independence and impartiality of the Izmir State Security Court;
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 they were 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, EUR 1,000 (one thousand euros) to each of the applicants in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (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 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

APPENDIX**LIST OF APPLICANTS**

1. Mr Abdulkadir¹ Eraslan, born in 1966, detained in Bursa Prison.
2. Mr Murat Satık, born in 1962, resides in Istanbul.
3. Mr Ali Haydar Özdemir, born in 1973, resides in Izmir.
4. Mr Mehmet Kışanak, born in 1962, resides in Izmir.
5. Mr Kadir Satık, born in 1966, resides in Istanbul.
6. Ms Sayime Sefer, born in 1971, resides in Izmir.
7. Mr Nevzat Sağnıç, born in 1956, resides in Izmir.
8. Ms Mine Neşe Sağnıç, born in 1957, resides in Izmir.
9. Mr Nadir Kalkan, born in 1957, detained in Bursa Prison.
10. Mr Metin Göktepe, born in 1966, resides in Izmir.
11. Ms Neslihan Göktepe, born in 1973, resides in Izmir.
12. Mr Mehmet Eraslan, born in 1952, resides in Izmir.
13. Mr Emsihan Karatay, born in 1969, resides in Izmir.
14. Ms Fazilet Ülkü Bozkurt, born in 1971, resides in Izmir.

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