



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

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1959 · 50 · 2009

SECOND SECTION

**CASE OF MEHMET ZEKİ DOĞAN v. TURKEY**

*(Application no. 38114/03)*

JUDGMENT

STRASBOURG

6 October 2009

**FINAL**

*06/01/2010*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Mehmet Zeki Doğan 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 15 September 2009,

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

## PROCEDURE

1. The case originated in an application (no. 38114/03) 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 a Turkish national, Mr Mehmet Zeki Doğan (“the applicant”), on 13 November 2003.

2. The applicant was represented by Mr M.A. Kırdök and Mrs M. Kırdök, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 13 May 2008 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the use of the applicant's statements allegedly taken under duress by the Istanbul State Security Court and the lack of legal assistance to the applicant during his police custody. It 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 is serving his prison sentence in the Edirne prison.

5. On 13 March 1998 the applicant was taken into police custody on suspicion of membership of an illegal organisation. On 15 March 1998 his statement was taken by the police and on 20 March 1998 he was released due to lack of evidence.

6. On 7 May 1998 the applicant was arrested once again on suspicion of injuring a third person and collecting money by force from third persons on behalf of an illegal organisation. On 12 May 1998 the applicant was interrogated by the police in the absence of a lawyer. On 14 May 1998 he was taken for a medical examination. The medical report stated that there was no trace of ill-treatment on his body. On the same day, the applicant was brought before the public prosecutor and subsequently the investigating judge. Before both officials, the applicant retracted his police statement, alleging that he had been forced to sign it. After the questioning was over, the investigating judge remanded the applicant in custody. On 25 May 1998 the public prosecutor at the Istanbul State Security Court filed an indictment, charging the applicant under Article 146 of the former Criminal Code with attempting to undermine the constitutional order. On 13 December 2001 the Istanbul State Security Court convicted the applicant of being a member of an illegal organisation and sentenced him to fifteen years, seven months and fifteen days' imprisonment, pursuant to Article 168 § 2 of the former Criminal Code. In convicting the applicant, the first instance court relied, *inter alia*, on the police statement of the applicant.

7. On 8 July 2002 the Court of Cassation quashed the judgment of the Istanbul State Security Court, holding that the applicant should have been convicted under Article 146 of the former Criminal Code. After re-examining the case file, on 12 November 2002 the Istanbul State Security Court convicted the applicant under Article 146 of the former Criminal Code and sentenced him to life imprisonment. On 5 May 2003 the Court of Cassation rejected the applicant's appeal. On 2 June 2003 the decision of the Court of Cassation was deposited with the Registry of the Istanbul State Security Court.

## THE LAW

8. Relying on Article 6 §§ 1 and 3 (c) of the Convention, the applicant complained that he had been denied the assistance of a lawyer during his police custody, and that his police statement, allegedly under duress, had been used for his conviction.

9. The Government maintained that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, since at no stage of the domestic proceedings did he rely on the fact that he had been deprived of his right to legal assistance during police custody. In the alternative, they stated that the application was introduced outside the six months time-limit, since the applicant's police custody had ended on 14 May 1998 and, as of the first hearing on 23 July 1998, the applicant was represented by a lawyer.

10. The Court notes that the restriction imposed on the applicant's right of access to a lawyer was systemic, 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. As a result this restriction applied as a blanket rule and the applicant could not request the benefit of legal assistance during his police custody. Accordingly, the Court rejects the Government's preliminary objection regarding the exhaustion of domestic remedies. As to the Government's contention that the applicant failed to comply with the six months time-limit, the Court recalls that, in assessing whether or not a trial was fair, regard should be had to the entirety of the proceedings (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports of Judgments and Decisions* 1996-I). In the present case, the applicant lodged his application with the Court within six months of the delivery of the final decision given by the Court of Cassation. He therefore lodged his application to the Court within the six month time-limit, as required by Article 35 § 1 of the Convention. Consequently, the Government's second objection cannot be upheld.

11. The Court notes that this remaining 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 and must therefore be declared admissible.

12. As regards the merits, the Court observes that the medical report dated 14 May 1998, which is not disputed by the applicant, stated that there was no sign of ill-treatment on the applicant's body. There is no other evidence which could lead to the conclusion that he had signed his police statement under duress. Nevertheless, it is an undisputed fact that the applicant did not have the assistance of a lawyer during this period. The Court therefore considers it appropriate to limit its examination solely to this matter.

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

14. As regards just satisfaction under Article 41 of the Convention, the applicant did not submit any claims for pecuniary or non-pecuniary compensation. He only requested a retrial. Based on a legal fee agreement, the applicant also requested 5,000 euros (EUR) in respect of legal fees and 400 Turkish liras (TRY) (approximately EUR 190) in respect of costs and expenses.

15. The Court considers that the most appropriate form of redress would indeed be the re-trial of the applicant in accordance with the requirements of Article 6 § 1 of the Convention, should he so request (see, *Salduz*, cited above, § 72).

16. According to its relevant case-law and the documents in its possession, the Court also considers it reasonable to award the applicant the sum of EUR 1,000 in respect of costs and expenses.

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 remainder of the application admissible;
2. *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 applicant while in police custody;
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 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, 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 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé  
Registrar

Françoise Tulkens  
President