



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

1959 · 50 · 2009

SECOND SECTION

CASE OF FATMA TUNÇ v. TURKEY (no. 2)

(Application no. 18532/05)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Fatma Tunç v. Turkey (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 18532/05) 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, Ms Fatma Tunç (“the applicant”), on 15 April 2005.

2. The applicant was represented by Mrs F. Karakaş 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 examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1980 and lives in Kocaeli.

5. On 10 October 2001 the applicant was arrested in Istanbul on suspicion of being a member of an illegal organisation. On 14 October 2001 the applicant was allowed to see her lawyer for a short period of time (five minutes) following the permission given by the public prosecutor.

6. On 14 October 2001 the applicant's statement was taken by the police in the absence of a lawyer. In her statement, the applicant accepted the charges against her and gave a detailed account of her connections in the illegal organisation. Subsequently, on 16 October 2001 the applicant was brought before the public prosecutor, and thereafter before the investigating

judge of the Istanbul State Security Court. Before the public prosecutor, the applicant admitted that she was a member of the illegal organisation. When questioned by the investigating judge, the applicant denied the charges against her. After the interrogation, the investigating judge ordered that the applicant be detained on remand.

7. On 23 November 2001 the public prosecutor filed an indictment with the Istanbul State Security Court, accusing the applicant of being a member of an illegal armed organisation under Article 168 § 2 of the Criminal Code and Article 5 of the Anti-Terrorism Act.

8. On 4 March 2004, based on her police statement and other evidence before it, the Istanbul State Security Court convicted the applicant as charged and sentenced her to twelve years and six months' imprisonment. On 11 November 2004 the Court of Cassation rejected the applicant's appeal.

9. On 7 October 2005 the applicant was released from prison.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

10. Relying on Article 6 § 3 (a), (b) and (c) of the Convention, the applicant complained that she had been denied the assistance of a lawyer during her police custody and that her police statement which had been taken in the absence of a lawyer had been used in her conviction by the trial court.

11. The Government argued that the applicant had failed to comply with the six months time-limit prescribed by Article 35 § 1 of the Convention. In their view, the applicant should have lodged her application with the Court within six months following the first hearing before the Istanbul State Security Court, which was held on 10 December 2001. As regards the merits, the Government submitted that the applicant had seen her lawyer on 14 October 2001, during her police custody.

12. The Court recalls that, in assessing whether or not a trial was fair, regard should be had to the entirety of the proceedings (*John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports of Judgments and Decisions* 1996-I). In the present case, the applicant lodged her application with the Court within six months following the final decision of the Court of Cassation which had been delivered on 11 November 2004, as required by Article 35 § 1 of the Convention. Consequently, the Government's objection cannot be upheld.

13. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

14. From the documents submitted by the parties, the Court observes that, indeed, the applicant had seen her lawyer on 14 October 2001 for five minutes, between 4.40 and 4.45 p.m. In this connection, the Court recalls that in its *Salduz* judgment ([GC], no. 36391/02, §§ 54-55, 27 November 2008), 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 offence charged will be considered at the trial. In order for the right to a fair hearing to remain sufficiently “practical and effective”, Article 6 § 1 requires, as a rule, access to a lawyer as from the first interrogation of a suspect by the police, unless it is demonstrated in the particular circumstances of the particular case that there are 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 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, the Court concludes that although the applicant had met her lawyer during police custody, this meeting cannot be considered to have been sufficient by Convention standards.

15. The Court further observes that it has already examined the issue concerning the lack of legal assistance in police custody 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. It has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Salduz* judgment.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant further alleged under Article 6 that she had not been tried by an independent and impartial tribunal. She maintained under Articles 13 and 14 that she had no effective remedy for her Convention grievances.

18. The Court finds nothing whatsoever in the case file to substantiate the applicant's allegations or 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

19. The applicant requested 5,000 euros (EUR) in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary compensation. She further claimed EUR 2,000 for costs and expenses and EUR 5,000 for legal fees. In support of her claims, the applicant submitted a legal fee agreement.

20. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. In respect of non-pecuniary damage, ruling on an equitable basis, it awards EUR 1,500 to the applicant.

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

22. 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, regard being had to the documents in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,000 under this head.

23. 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 complaint concerning the lack of legal assistance to the applicant admissible and the remainder of the application inadmissible;
2. *Holds* 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, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) plus any tax that may be chargeable to the applicant, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President