



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

1959 · 50 · 2009

SECOND SECTION

CASE OF FUAT ÇALIŞKAN v. TURKEY

(Application no. 25506/03)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

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 Fuat Çalışkan 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,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 25506/03) 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 Fuat Çalışkan (“the applicant”), on 27 May 2003.

2. The applicant was represented by Ms Gönül Sözeri, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that the failure to communicate to him the written observations on his case of the Chief Prosecutor at the Court of Cassation had been in breach of his right to a fair hearing.

4. On 7 May 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**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1961 and lives in Istanbul.

6. On 4 February 2000 a car driven by the applicant and a lorry driven by Mr E.K. were involved in a road traffic accident. The applicant's passenger died on the spot and the applicant was seriously injured.

7. Two passengers in the lorry involved in the accident were questioned by the gendarmerie the same day. They stated that the road had been slippery and that the car driven by the applicant had skidded and hit their lorry head on.

8. The driver of the lorry, Mr E.K., was arrested but was released the following day.

9. On 11 February 2000 the prosecutor at the Gerede Criminal Court of First Instance ("the trial court") filed an indictment charging the applicant and E.K. with the offence of causing death and injury by recklessness. It appears from the indictment that one of the passengers travelling in the lorry was also injured in the accident.

10. During the first hearing, which took place on 11 April 2000, the lawyer representing the applicant informed the trial court that the applicant was still ill and bedbound. He would submit his defence arguments to the trial court after his client, the applicant, had given evidence to the trial court in person.

11. On 7 June 2000 the applicant was questioned by a court in Istanbul which had been requested to do so by the trial court in a letter rogatory. The applicant stated that the road had been very icy and that the lorry had gone out of control and hit his car.

12. On 20 July 2000 the trial court judge and the prosecutor examined the stretch of road where the accident had taken place.

13. A report was prepared by a police officer and submitted to the trial court on 28 July 2000. According to the report, the applicant had been solely responsible for the accident.

14. In his petition of 25 September 2000, the lawyer for the applicant lodged an objection to the above-mentioned report and requested that an additional report be prepared by the Forensic Medical Institute. This request was accepted by the trial court.

15. In their report of 17 January 2001, three experts at the Forensic Medical Institute confirmed that the applicant had been solely responsible for the accident.

16. During the hearing held on 29 March 2001, the applicant's lawyer lodged an objection to the Forensic Medical Institute's report and asked the trial court to obtain another report, this time from a university. No decision was taken by the trial court in response to that request.

17. On 4 October 2001 the trial court found the applicant guilty as charged and sentenced him to two years' imprisonment and to payment of a fine. The trial court decided that, regard being had to the applicant's personality and the nature of the offence, there was no reason to commute the prison sentence to a fine.

18. The applicant appealed on 31 October 2001.

19. The Chief Prosecutor at the Court of Cassation submitted his written observations to that court and requested that the applicant's conviction be quashed. These observations were not communicated to the applicant.

20. On 23 September 2002 the Court of Cassation dismissed the appeal and upheld the conviction. The Court of Cassation did not hold a hearing before reaching its conclusion.

21. The decision of the Court of Cassation was received at the registry of the trial court on 25 October 2002. The applicant claimed that he had become aware of the decision on 2 December 2002.

22. On 16 December 2002 the applicant asked for the trial court's judgment to be rectified.

23. The order for payment of the fine and for the applicant to surrender himself to the prison authorities was communicated to the applicant on 25 December 2002.

24. On 27 December 2002 the applicant applied to the prosecutor's office and asked for execution of the prison sentence to be deferred. The applicant's request was accepted on 30 December 2002 and execution of the prison sentence was deferred until 25 April 2003.

25. On 24 February 2003 the applicant's request for rectification was rejected by the prosecutor at the Court of Cassation. The prosecutor stated that the grounds invoked by the applicant had already been examined by the Court of Cassation in its decision of 23 September 2002.

26. On 17 March 2003 the applicant asked for a retrial. The same day the request was rejected by the Gerde Criminal Court of First Instance, which noted that the applicant's arguments had been considered and rejected in the Court of Cassation decision.

27. On 26 May 2003 the applicant began serving his prison sentence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

28. The applicant complained that the failure to communicate to him the written observations on his case of the Chief Prosecutor at the Court of Cassation had infringed his right to a fair hearing, as provided for in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

29. The Government contested that argument.

A. Admissibility

30. The Government considered that the applicant had failed to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention. They submitted that, as decisions of the Court of Cassation's Criminal Division are not served on defendants but are instead deposited with the registries of first-instance courts, the date of deposit of the decision with the registry should be the starting-point for the running of the six-month period. The Court of Cassation's decision of 23 September 2002 had been deposited with the registry of the Gerede Criminal Court of First Instance on 25 October 2002 but the application had not been lodged with Court until 27 May 2003, that is, more than six months later.

31. The applicant did not submit his observations in response to those of the Government and did not, therefore, challenge the Government's objection to the admissibility of the application.

32. The Court reiterates that, where an applicant is entitled to be served automatically with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (*Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V). In a number of cases where, as in the present case, the domestic law did not provide for service, the Court considers it appropriate to take the date on which the final domestic decision was deposited with the registry of the first-instance court as the starting-point of the six-month period (see, among others, *Aydın and Şengül v. Turkey*, no. 75845/01, § 14, 3 May 2007 and the cases cited therein).

33. However, in cases where, as in the present case, subsequent to the deposit of the Court of Cassation decision with the registry of the first-instance court, the domestic authorities take steps to execute the final judgment, the six-month period starts to run on the date when the applicant is notified of the execution process (see *Özer v. Turkey*, nos. 35721/04 and 3832/05, § 35, 5 May 2009).

34. In the present case the order for payment of the fine and for the applicant to surrender himself to the prison authorities was communicated to the applicant on 25 December 2002 (see paragraph 23 above). It follows that the applicant, who introduced his application with the Court on 27 May 2003, has complied with the six-month rule. The Court therefore dismisses the Government's objection to the admissibility of the complaint.

35. The Court notes that this complaint 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.

B. Merits

36. The applicant complained that he had not been informed of the written observations of the Chief Prosecutor submitted to the Court of Cassation. This, he argued, had prevented him from responding to the prosecutor's arguments in his grounds of appeal.

37. The Government denied the allegations. They stated that the applicant could have found out about the written observations of the prosecutor as all files pending before the Court of Cassation were accessible to the parties.

38. The Court notes that it has already examined the same grievance and found a violation of Article 6 § 1 of the Convention in its judgment in the case of *Göç v. Turkey* ([GC], no. 36590/97, §§ 53-58, ECHR 2002-V).

39. The Court has examined the present complaint made by the applicant and finds no particular circumstances which would require it to depart from its findings in the aforementioned case.

40. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the non-communication to the applicant of the Chief Prosecutor's observations.

II. ALLEGED VIOLATIONS OF ARTICLES 5, 6 AND 13 OF THE CONVENTION

41. Relying again on Article 6 of the Convention the applicant complained that

(i) the trial court had not heard evidence from him in person;

(ii) there had been only one hearing – that is, the hearing held on 11 April 2002 – attended by all the eyewitnesses to the accident. However, as he had not regained consciousness before that hearing, and therefore had not been in a position to brief his lawyer beforehand, the lawyer had not been able to put questions to those witnesses during that hearing;

(iii) as the trial court had insisted that he be questioned as soon as possible, he had had to appear at the Istanbul court before he had recovered completely. Furthermore, his lawyer, who had been practising in another town, had not been able to be present at the Istanbul court when he was being questioned. Hence, he had not been given adequate time and facilities for the preparation of his defence;

(iv) the decision of the trial court had not been adequately reasoned. For example, even though he had never appeared before the trial court, it had nevertheless held, without adequate reasoning, that it was not appropriate to commute his prison sentence on account of his personality; and

(v) the trial court had failed to take into account the fact that the road had been icy and slippery.

42. Under Article 5 of the Convention the applicant complained that the refusal of the trial court to commute his prison sentence had been in breach of his right to liberty and security.

43. Finally, the applicant submitted that he had not had an effective remedy within the meaning of Article 13 of the Convention because his arguments, which had the potential to prove his innocence, had not been considered adequately either by the prosecutor, when rejecting his request for rectification, or by the trial court when rejecting his request for a retrial.

44. The Court has examined these complaints. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

45. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

47. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the non-communication of the Chief Prosecutor's written observations to the applicant admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President