



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ÇOLAKOĞLU v. TURKEY

(Application no. 29503/03)

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 Çolakoğlu 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. 29503/03) 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 Sefa Çolakoğlu (“the applicant”), on 3 April 2003.

2. The applicant was represented by Mr Ender Büyükçulha, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that the criminal proceedings against him had not been fair and that they had not been concluded within a reasonable time.

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 1958 and lives in Ankara.

6. On 19 March 1992 the applicant was arrested on suspicion of obtaining property by deception. The same day he was placed in police custody in Ankara, where a statement was taken from him, allegedly under

duress. In that statement the applicant admitted having committed the offence.

7. The applicant was released from police custody on 21 March 1992 and was brought before a judge the same day. The judge questioned the applicant further and ordered his detention in prison pending the institution of criminal proceedings against him. When he was questioned by the judge, the applicant denied the accusations against him.

8. While being questioned in police custody and subsequently by the judge, the applicant was not represented by a lawyer.

9. On 24 March 1992 the Ankara prosecutor filed an indictment with the Ankara Criminal Court of First Instance, charging the applicant and another person with the offences of forgery and perverting the course of justice.

10. On 25 March 1992 the applicant's legal representative submitted a petition to the Criminal Court of First Instance, arguing that there was no evidence against the applicant other than the police-custody statement taken from him "by force".

11. The same day the applicant asked to be examined by the prison doctor. According to the report drawn up by the doctor, there were injuries to his mouth.

12. On 30 March 1992 the applicant's trial began before the Ankara Criminal Court of First Instance. During the third hearing, held on 22 May 1992, the court decided that it lacked jurisdiction *ratione materiae* and transferred the case file to the Ankara Assize Court.

13. In the course of the criminal proceedings the applicant was represented by a lawyer. He alleged that he had been ill-treated in police custody and submitted that the only evidence against him was the statement taken from him in police custody.

14. On 3 December 1992, after having been detained for eight and a half months, the applicant was released from prison on bail.

15. The criminal proceedings before the Ankara Assize Court continued for a further period of seven and a half years because the court was waiting for two other accused persons to be arrested and brought to trial.

16. On 29 June 2000 the applicant was found guilty and sentenced to four years and eight months' imprisonment. In reaching its decision the Ankara Assize Court had regard to the statement taken from the applicant in police custody.

17. The applicant appealed and argued, in particular, that he had been forced to sign the police-custody statement. In support of his allegation the applicant referred to the above-mentioned medical report of 25 March 1992.

18. The prosecutor at the Court of Cassation submitted his observations on 12 March 2002 and recommended that the applicant's appeal be dismissed. These observations were not communicated to the applicant.

19. On 13 June 2002 the appeal was rejected by the Court of Cassation and the applicant's conviction was upheld. The Court of Cassation did not

hold a hearing before giving its decision. The decision was returned to the registry of the first-instance court on 22 July 2002.

20. On 7 October 2002 the applicant was arrested and imprisoned to serve his sentence.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

21. The applicant complained that he had been convicted on the basis of the police-custody statement extracted from him under duress and that he had been unable to benefit from the assistance of a lawyer in the initial stages of the criminal proceedings. Furthermore, the prosecutor's observations submitted to the Court of Cassation on 12 March 2002 had not been forwarded to him. Finally, the criminal proceedings against him had not been concluded within a reasonable time. In relation to these complaints the applicant invoked Article 6 §§ 1 and 3 (a) – (d) of the Convention.

22. Relying on Article 6 § 2 of the Convention, the applicant complained that, in the statement taken from him in police custody, he had been referred to as a “defendant” and not as a “suspect”.

Article 6 of the Convention, in so far relevant, reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] tribunal established by law.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

23. The Government contested that argument.

A. Admissibility

24. 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 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 13 June 2002 had been deposited with the registry of the first-instance court on 22 July 2002 but the application had not been lodged with the Court until 3 April 2003, that is, more than six months later.

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

26. 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 (see *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 considered 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, that being the date when the parties were definitely able to find out its content (*Aydın and Şengül v. Turkey*, no. 75845/01, § 14, 3 May 2007 and the cases cited therein).

27. However, there may be exceptions to this general rule. For example, in the case of *Seher Karataş v. Turkey* the Court took as the starting point of the six-month period not the date of deposit of the Court of Cassation decision with the registry of the first instance court, but the date on which the applicant was notified of the order for the payment of the fine to which she had been sentenced (no. 33179/96, § 28, 9 July 2002; see also, more recently, *Özer v. Turkey*, nos. 35721/04 and 3832/05, § 35, 5 May 2009).

28. In reaching its decisions in its judgments in the *Seher Karataş* and *Özer* cases, the Court took into account the fact that the Court of Cassation had adopted its decisions without having held a hearing. This is significant because, if the Court of Cassation were to hold a hearing, the appellant would be notified of its date and would therefore be aware that the decision would be given either at the end of that hearing or within a period of one week thereafter. In the latter instance, the Court expects the applicant to show a certain degree of diligence and obtain a copy of the decision from the registry of the first-instance court (see, for example, *Okul v. Turkey* (dec.), no. 45358/99, 4 September 2003).

29. In the present case the Court of Cassation did not hold a hearing before rendering its decision of 13 June 2002 (see paragraph 19 above). That decision was deposited with the registry of the first instance court on 22 July 2002. In these circumstances, and having regard to the similar cases referred to above, the Court considers that the applicant would only have become aware that his conviction had been upheld by the Court of Cassation and that the decision of the Court of Cassation had been deposited with the registry of the first-instance court, when he was arrested on 7 October 2002 and sent to prison to serve his sentence. It follows that the applicant, who introduced his application with the Court on 3 April 2003, has complied with the six-month rule. The Court therefore dismisses the Government's objection in this respect.

30. As concerns the complaint under Article 6 § 2 of the Convention, and having regard to all the material in its possession, and in so far as the complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that it must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

31. The Court notes that the remaining complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Complaints concerning the lack of legal assistance at the initial stages of the criminal proceedings and the use of evidence against the applicant which was allegedly obtained under duress

32. The Government argued that the applicant had not asked to be represented by a lawyer in police custody.

33. The Court notes that there is no mention in the statement taken from the applicant in police custody that he had been reminded of his right to a lawyer but that he had refused it. It therefore cannot attach weight to the Government's argument.

34. The Court reiterates the basic principles laid down in its judgment in the case of *Salduz v. Turkey* ([GC], no. 36391/02, §§ 50-55, 27 November 2008). It will examine the present case in the light of those principles.

35. Furthermore, the Court observes that, even though the applicant denied the accuracy of the contents of the statement taken from him in the absence of legal assistance, and alleged, by referring to the medical report of 25 March 1992, that he had been ill-treated in police custody where the

statements had been taken from him, (see paragraphs 10 and 13 above), the Ankara Assize Court relied on that statement when convicting him.

36. The Court reiterates that the use of evidence in criminal proceedings obtained under duress infringes the fairness of such proceedings even if the admission of such evidence was not decisive in securing the conviction (see *Haci Özen v. Turkey*, no. 46286/99, § 101, 12 April 2007, and the cases cited therein). In this connection the Court refers to its conclusion in the case of *Örs and Others v. Turkey* (no. 46213/99, §§ 55-61, 20 June 2006) and observes with regret that, before relying on the applicant's statement when convicting him, the Ankara Assize Court did not give any consideration to the applicant's allegations of ill-treatment, which were supported by a medical report.

37. Thus, the applicant in the present case was undoubtedly affected by the restrictions on his access to a lawyer in the course of his police custody, during which he was also allegedly ill-treated. Therefore, neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which had occurred earlier.

38. In sum, the Court finds that the absence of a lawyer at the initial stages of the investigation irretrievably affected the applicant's defence rights.

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

2. Complaint concerning the non-communication of the prosecutor's observations to the applicant

40. The Government 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.

41. 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).

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

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

3. Complaint concerning the length of the proceedings

44. The Government submitted that the length of the proceedings had not exceeded the reasonable-time requirement as the applicant's case had been complex.

45. 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, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

46. It notes that the period to be taken into consideration began on 19 March 1992, when the applicant was arrested (see paragraph 6 above), and ended on 13 June 2002, when his appeal was rejected by the Court of Cassation (see paragraph 19 above). It thus lasted more than ten years for two levels of jurisdiction.

47. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi* cited above).

48. 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. Having regard to its case-law on the subject, the Court 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

50. The applicant failed to submit his claims for just satisfaction within the prescribed time-limit, and they were not, therefore, admitted to the file. Accordingly, the Court considers that there is no call to award him any sum on that account.

51. Nevertheless, where the Court finds that an applicant has been convicted in criminal proceedings which were found to be in breach of Article 6 § 1 of the Convention, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant, as far as possible, be put in the position in which he would have been had this provision not been disregarded (see *Şirin v. Turkey*, no. 47328/99, § 30, 15 March 2005). The Court therefore considers that the most appropriate form of redress would be the retrial of the applicant in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Salduz*, cited above, § 72).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 2 of the Convention inadmissible and 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 at the initial stages of the criminal proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-communication of the prosecutor's written observations to the applicant;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings.

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