



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

1959 · 50 · 2009

SECOND SECTION

CASE OF AKBULUT v. TURKEY

(Application no. 7076/05)

JUDGMENT

STRASBOURG

1 December 2009

FINAL

01/03/2010

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 Akbulut v. Turkey,

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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 10 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 7076/05) 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 Şennur Şensoy Akbulut (“the applicant”), on 23 February 2005.

2. The applicant was represented by Mr S. Cengiz, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 30 January 2009 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 1969 and lives in İzmir.

5. On 8 March 2004 the İzmir Public Prosecutor filed an indictment against the applicant with the İzmir Magistrates' Court for non-compliance with various administrative orders. He requested that the applicant be sentenced pursuant to Article 526 of the Criminal Code. The indictment was not served on the applicant. On 9 April 2004 the İzmir Magistrates' Court, without holding a hearing, issued a penal order and found the applicant guilty as charged. The court sentenced the applicant to three months' imprisonment and to a fine of 54,525,000 Turkish Liras (TRL). In the same judgment, the court commuted the sentence of imprisonment to a fine. The

applicant was therefore fined to a total of TRL 381,495,000. On 20 May 2004 the İzmir Criminal Court of General Jurisdiction dismissed the applicant's appeal without holding a hearing. This decision was served on the applicant on 7 September 2004. The applicant paid the fine on 5 December 2004¹.

THE LAW

6. The applicant complained under Article 6 § 1 of the Convention that she had been unable to defend herself in person or through legal assistance, as there had been no public hearing in her case. She further stated that the indictment of the public prosecutor had not been served on her. In this respect, she complained that she had been denied adequate time and facilities for the preparation of her defence and the possibility of submitting counter arguments and evidence, including the examination of witnesses, in breach of Article 6 § 3 (a), (b) and (d) of the Convention.

7. The applicant further maintained under Article 7 of the Convention that both the Public Prosecutor and the courts had misinterpreted the domestic law as her omissions did not fall within the scope of Article 526 of the Criminal Code. Relying on Article 8 of the Convention, the applicant stated that her professional and private life, in particular her reputation as a lawyer, would be severely affected by the unfair judgments. Invoking Article 13 of the Convention, she also submitted that the appeal procedure before the İzmir Criminal Court of General Jurisdiction had not constituted an effective mechanism. Finally, she complained under Article 1 of Protocol No. 1 that the fine imposed on her by the unfair judgment had deprived her of her property.

8. The Court observes that the complaints raised under Article 6 of the Convention, concerning the fairness of the proceedings, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that this part of the application is not inadmissible on any other grounds. It must therefore be declared admissible.

9. However, as regards the remaining complaints raised under Articles 7, 8, 13 and Article 1 of Protocol No. 1 to the Convention, the Court finds that an examination of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

10. As regards the merits, firstly, the Court considers that, in the instant case, it is more appropriate to deal with the applicant's complaints under Article 6 § 1 globally due to the overlapping nature of the issues and since

¹ TRL 381,495,000 was equivalent to approximately 200 euros at the time.

the sub-paragraphs of Article 6 § 3 may be regarded as specific aspects of the general fairness guarantee of the first paragraph.

11. The Court observes that in the present case, in accordance with the relevant domestic law prevailing at the time of the events, no public hearing was held during the applicant's trial. Both the Izmir Magistrates' Court, which issued the penal order and fined the applicant, and the Izmir Criminal Court, which examined her objection, took their decisions on the basis of the documents in the case file. The applicant was not given the opportunity to defend herself in person or through a lawyer before the courts which determined her case.

12. The Court reiterates that it has already examined the same grievance in the several similar cases and found a violation of Article 6 § 1 of the Convention (*Piroğlu and Karakaya v. Turkey*, nos. 36370/02 and 37581/02, 18 March 2008; *Dağlı v. Turkey*, no. 28888/02, 27 November 2007; *Karahanoglu v. Turkey*, no. 74341/01, 3 October 2006; *Mevlüt Kaya v. Turkey*, no. 1383/02, 12 April 2007; and *Taner v. Turkey*, no. 38414/02, 15 February 2007). It has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned judgments.

13. In view of the above, the Court concludes that the procedure followed by the judicial authorities prevented the applicant from exercising her defence rights properly and thus rendered the criminal proceedings unfair.

14. Consequently, there has been a violation of Article 6 § 1 of the Convention.

15. Concerning just satisfaction, the applicant claimed TRL 381,495,000 in respect of pecuniary compensation. She further requested EUR 5,000 in respect of non-pecuniary damage. Finally, the applicant claimed EUR 4,735.75 in respect of legal fees covering 26 hours of legal work, spent in the preparation and presentation of this case before the Court, and EUR 36 in respect of costs and expenses.

16. As regards pecuniary damage, the Court notes that it cannot speculate as to what the outcome of proceedings compatible with Article 6 of the Convention would have been. Accordingly, it makes no award under this head (see *Piroğlu and Karakaya*, cited above, § 72).

17. Moreover, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

18. Finally, in the light of the documents in its possession, the Court considers it reasonable to award the applicant EUR 1,000 for legal fees, costs and expenses.

19. The Court considers 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 under Article 6 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, in respect of costs and expenses, 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, which sum is 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President