



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

1959 · 50 · 2009

THIRD SECTION

CASE OF AKYAZICI v. TURKEY

(Application no. 43452/02)

JUDGMENT

STRASBOURG

15 December 2009

FINAL

15/03/2010

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 Akyazıcı v. Turkey,

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

Josep Casadevall, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Işıl Karakaş,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 43452/02) 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 Tuğrul Akyazıcı (“the applicant”), on 16 September 2002.

2. The applicant was represented by Mr M. Akyazıcı, a lawyer practising in Samsun. The Turkish Government (“the Government”) were represented by their Agent for the purposes of the proceedings before the Court.

3. On 1 February 2007 the Court decided to give notice of the application. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, an anaesthesiologist, was born in 1968 and lives in Samsun.

5. The applicant was working at the Kars State Hospital when criminal proceedings were instigated against him for alleged involvement in the activities of an illegal organisation. He was accused together with other suspects of, *inter alia*, hanging posters and banners in various places in Ankara on behalf of that organisation. Throughout the proceedings the

applicant maintained his innocence. In the meantime, Kars State Hospital suspended the applicant pending the criminal proceedings.

6. On 11 September 2001 the Ankara State Security Court, on the basis of the evidence contained in the case file, convicted the applicant under Article 7 § 1 of Law no. 3713 and sentenced him to two years and six months' imprisonment and to a fine. The applicant appealed.

7. On an unspecified date a written opinion of the principal public prosecutor at the Court of Cassation dated 10 December 2001 was submitted to that court. This opinion was not communicated to the applicant.

8. On 27 March 2002 the Court of Cassation held a hearing and upheld the judgment of the first-instance court in respect of the applicant.

9. The applicant's request for a rectification of the Court of Cassation's judgment was dismissed by the principal public prosecutor at that court.

10. The applicant submitted that he had been released from prison in July 2003.

11. By an additional judgment dated 4 May 2004, the Ankara State Security Court, taking into account the amendment to the definition of "terror acts" under section 7 of Law no. 3713 pursuant to Law no. 4928, acquitted the applicant, who had not taken part in any violent activities, and nullified his conviction, together with all its consequences. This judgment became final on 11 May 2004.

12. In the meantime, on 28 February 2002, the Supreme Disciplinary Commission of the Ministry of Health decided to dismiss the applicant from the civil service. The applicant's objection to this decision was dismissed by the administrative court who noted, *inter alia*, that, according to the disciplinary investigation, the applicant had taken fifteen days leave from 2 June 2000 in pursuit of his illegal activities. The court also noted that the applicant's conviction had become final. This decision was subsequently upheld by the Supreme Administrative Court on 27 December 2005. In his observations the applicant submitted that, despite his acquittal, his request for a retrial had been rejected by the administrative court. However, he did not submit any court decisions.

13. According to an attestation dated 10 September 2007 the applicant is currently employed at Atasam hospital in Samsun.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice in force at the material time and subsequent changes to domestic legislation are outlined in the following judgments; *Göç v. Turkey*, [GC], no. 36590/97, § 34, ECHR 2002-V, and *Erdal Taş v. Turkey*, no. 77650/01, §§ 18-19, 19 December 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. The applicant complained that the written opinion of the principal public prosecutor at the Court of Cassation had never been served on him, thus depriving him of the opportunity to put forward his counter-arguments. The applicant relied on Article 6 of the Convention which, in so far as relevant, provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

16. The Government suggested that, since the applicant had been acquitted in 2004, he could no longer be considered a victim. The Government invited the Court to strike the application out of the Court's list of cases in accordance with Article 37 of the Convention.

17. The applicant disagreed with the Government's arguments and maintained his complaints.

18. The Court reiterates that “a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention” (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003).

19. The Court notes that in 2002 the applicant was convicted by the Ankara State Security Court. He was sentenced to a fine and to two years and six months' imprisonment. It is true that following an amendment in domestic law the applicant subsequently had a retrial and, in 2004, was acquitted of the charges against him. However, the Court notes that, in the meantime, the applicant had already served his prison sentence. In the absence of any submissions by the Government concerning the possible avenues provided for in the domestic law for claiming compensation in respect of these periods, the Court cannot but observe that, as matters stand, no compensation has been paid to the applicant for any violation of his right in the first trial. The Court therefore concludes that the Government's objection that the applicant can no longer be considered a victim cannot be upheld.

20. The Court notes that this 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. It must therefore be declared admissible.

B. Merits

21. The Court notes that it has already examined the same grievance in the past and has found a violation of Article 6 § 1 of the Convention (see, in particular, *Göç*, cited above, § 58; *Abdullah Aydın v. Turkey (no. 2)*, no. 63739/00, § 30, 10 November 2005; and *Ayçoban and Others v. Turkey*, nos. 42208/02, 43491/02 and 43495/02, 22 December 2005).

22. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned cases.

23. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. In his application form and subsequent observations the applicant further complained under Articles 6 and 10 of the Convention that he had been denied a fair hearing by an independent and impartial tribunal and that the outcome of the proceedings had been unfair. He further complained of the manner in which the evidence had been gathered and assessed by the domestic authorities. The applicant claimed that his conviction and sentence had constituted an unjustified interference with his freedom of expression. He further pointed out that as a result of the criminal proceedings he had been dismissed from Kars State Hospital and that despite his acquittal he had not been reinstated in his previous post.

25. However, in the light of all the material in its possession, the Court finds that the applicants' above submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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.”

A. Damage

27. The applicant claimed, in total, 201,600 new Turkish liras (TRY) (approximately 115,714 euros (EUR)) in respect of pecuniary and non-pecuniary damages. The sum for pecuniary damages concerned loss of earnings.

28. The Government contested the amounts.

29. On the question of pecuniary damage, even assuming that there was any causal link between the violation found and the pecuniary damage alleged, the Court considers that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. The Court therefore makes no award in respect of pecuniary damage.

30. Moreover, it considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant (see *Ayçoban and Others*, cited above, § 32; *Turğay v. Turkey*, no. 21085/02, § 24, 12 April 2007; and *Mesut Yurtsever v. Turkey*, no. 42086/02, § 23, 19 July 2007).

B. Costs and expenses

31. The applicant also claimed, in total, TRY 41,527 (approximately EUR 23,835) for the costs and expenses incurred both before the domestic courts, including administrative proceedings, and before the Court. The applicant submitted a fees agreement concluded between him and his lawyer and some receipts pertaining to postal and court fees.

32. The Government contested the amounts.

33. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads.

C. Default interest

34. 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 complaint concerning the non-communication of the written opinion of the principal public prosecutor at the Court of Cassation 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;
3. *Holds* that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant;
4. *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 2,500 (two thousand five hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President