



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

SECOND SECTION

CASE OF ASLANTÜRK v. TURKEY

(Application no. 3884/04)

JUDGMENT

STRASBOURG

19 January 2010

FINAL

19/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aslantürk 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,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 3884/04) 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 Ejder Aslantürk (“the applicant”), on 3 September 2003.

2. The applicant was represented by Mr B. Mungan and Ms A. Aslantürk, two lawyers practising in Ankara? and Ms G. Doyduk, a lawyer practising in Strasbourg. The Turkish Government (“the Government”) were represented by their Agent.

3. On 16 September 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1951 and lives in Ankara.

5. On 11 August 1994 the applicant, a building contractor, was charged by the Ardahan public prosecutor with forgery of official documents for his personal financial benefit to the detriment of the administrative authorities.

6. On 18 October 1994 the Ardahan Assize Court held the first hearing on the merits of the case (case no. 1994/47).

7. During the second hearing held on 29 November 1994, the Ardahan Assize Court decided to await the outcome of certain administrative proceedings against a civil engineer working at the Kars governor's office.

8. On 21 May 1998 criminal proceedings brought against the aforementioned civil engineer were joined to the case against the applicant.

9. On 2 March 1999 the first-instance court was notified of the outcome of the administrative proceedings against the civil engineer.

10. On 13 February 2001 the Ardahan Assize Court convicted the applicant as charged.

11. On 15 November 2002 the Court of Cassation upheld the judgment of the first-instance court.

12. On 9 January 2003 the Principal Public Prosecutor at the Court of Cassation objected to the decision of the Court of Cassation, arguing, *inter alia*, that the first-instance court had failed to conduct a graphological examination of the allegedly forged documents.

13. On 1 April 2003 the Plenary Court of Cassation (Criminal Divisions) (*Yargıtay Ceza Genel Kurulu*) dismissed the Principal Public Prosecutor's objection regarding the graphological examination, holding that such an examination was not justified by the facts of the case, and upheld the judgment of 13 February 2001 with one minor technical amendment (*düzelterek onama*).

14. On 23 June 2003 the decision of the Plenary Court of Cassation (Criminal Divisions) was deposited with the registry of the first-instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

15. The applicant complained under Article 7 of the Convention that he had been wrongly convicted of the forgery of documents which did not bear his signature and which were not drafted under his responsibility.

16. The Government submitted that this part of the application was manifestly ill-founded.

17. The Court considers that this complaint should be examined from the standpoint of Article 6 § 1 of the Convention (see *Volkan Şahin v. Turkey*, (dec.), no. 34400/02, 6 May 2004). In this connection, the Court reiterates that it is not competent to examine the outcome of the proceedings unless there is arbitrariness. In the present case, the Court finds no basis on which to conclude that the domestic courts, when establishing the facts and

interpreting the law, acted in an arbitrary or unreasonable manner (see *Şahin*, cited above).

18. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention

20. The Government argued that the applicant had failed to exhaust domestic remedies as he had not raised the substance of his complaints before the national authorities.

21. The Court has already examined and rejected, in previous cases, similar objections to those of the Government as regards the alleged failure to exhaust domestic remedies (see, for example, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned application. It therefore rejects the Government’s objection, and finds that this part of the application is admissible.

22. As regards the merits of the applicant’s complaint, the Court observes that the period to be taken into consideration began on 11 August 1994 when the public prosecutor issued an indictment charging the applicant and ended on 1 April 2003 when the Plenary Court of Cassation (Criminal Divisions) upheld the judgment of Ardahan Assize Court. The period under consideration thus lasted eight years and seven months before two levels of jurisdiction.

23. 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 *Sertkaya v. Turkey*, no. 77113/01, § 21, 22 June 2006, and *Hasan Döner v. Turkey*, no. 53546/99, § 54, 20 November 2007). It finds no reason to depart from such a conclusion in the present case. Consequently, there has been a breach of Article 6 § 1 of the Convention owing to the excessive length of the criminal proceedings against the applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. In respect of pecuniary damage, the applicant claimed 50,000 Turkish liras (TRY)¹ for each year that he could not work as a building contractor after his conviction. He further claimed TRY 1,300² for each month that he could not undertake his professional duties as a construction engineer after his conviction.

26. The applicant claimed TRY 50,000³ in respect of non-pecuniary damage.

27. The Government contested these claims.

28. As regards the alleged pecuniary damage sustained by the applicant, the Court observes that the applicant did not produce any document in support of his claim, which the Court accordingly dismisses.

29. However, it accepts that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Consequently, taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 4,200.

B. Costs and expenses

30. The applicant also claimed TRY 34,000⁴ for the costs and expenses incurred before the domestic courts and TRY 15,950⁵ for those incurred before the Court.

31. The Government contested these claims.

32. 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, the Court observes that the applicant did not produce any document in support of his claims. Accordingly, the Court makes no award under this head (see *Karataş and Yıldız and Others v. Turkey*, nos. 4889/05, 4897/05, 24009/05, 33694/05, 37759/05, 42996/06, 43031/06, 43019/06, 43038/06 and 43054/06, § 30, 16 July 2009).

C. Default interest

33. 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.

1. Approximately EUR 23,360

2. Approximately EUR 607

3. Approximately EUR 23,360

4. Approximately EUR 15,885

5. Approximately EUR 7,450

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings 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*
 - (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 4,200 (four thousand two hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable on 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 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 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President