

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

SECOND SECTION

CASE OF KOCAMAN v. TÜRKİYE

(Application no. 24484/15)

JUDGMENT

STRASBOURG

22 October 2024

This judgment is final but it may be subject to editorial revision.



In the case of Kocaman v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 24484/15) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 May 2015 by a Turkish national, Mr Abdullah Sabri Kocaman ("the applicant"), who was born in 1956, lives in Gaziantep and was represented by Mr M. Feyzioğlu, a lawyer practising in Ankara;

the decision to give notice to the Turkish Government ("the Government"), represented by their then Agent, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, of the complaint concerning the right to a reasoned judgment under Article 6 § 1 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 1 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged unfairness of criminal proceedings in respect of the applicant owing to the domestic courts' failure to deliver a reasoned judgment.

2. On 30 May 2012 the Gaziantep Assize Court convicted the applicant of producing counterfeit currency and sentenced him to eight years and four months' imprisonment. On 18 February 2013 the Eighth Criminal Division of the Court of Cassation upheld the applicant's conviction. In the course of the criminal proceedings, the applicant was deprived of his liberty, first in the context of his arrest, from 9 to 10 February 2012, and later during his pre-trial detention, from 13 February 2012 to 23 March 2012. On 16 October 2014 the Constitutional Court dismissed an individual application lodged by the applicant, holding that it was manifestly ill-founded. According to the applicant's lawyer's submissions, that decision had been served on him on 26 January 2015.

3. On 11 February 2016 the Eighth Criminal Division of the Court of Cassation quashed its previous judgment following an objection lodged by the Principal Public Prosecutor at the Court of Cassation – an extraordinary legal remedy provided for in Article 308 of the Code of Criminal Procedure ("the CCP" – see for the text of this provision *Kerimoğlu v. Türkiye*, no. 58829/10, § 31, 6 December 2022) – and remitted the case to the trial court. It found that the applicant should have been acquitted in the absence of any concrete, absolute and credible evidence set out in the Assize Court's judgment proving that he had taken part in the production of counterfeit currency. According to the Court of Cassation, the applicant had been in contact with only one of the defendants, with whom he had no explicit telephone conversations which directly related to counterfeit money. In any event, those conversations could have been interpreted differently, as they had not been supported by any material findings, given that no evidence of the offence imputed to the applicant had been found as a result of searches of his home or office.

4. On 15 April 2016 the Gaziantep Assize Court acquitted the applicant, essentially on the same grounds as those indicated by the Court of Cassation, that decision becoming final on 27 April 2016 in the absence of any appeal against it.

5. On 29 November 2018 the Gaziantep Regional Appeal Court partly allowed a compensation claim lodged by the applicant under Article 141 of the CCP in respect of pecuniary and non-pecuniary damage that he had sustained as a result of his arrest and pre-trial detention in the context of the above-mentioned criminal proceedings, and awarded him 15,000 Turkish liras (TRY) in respect of non-pecuniary damage and TRY 794.62 in respect of pecuniary damage. According to the information available on the Court of Cassation's website, the decision in question was upheld on 23 January 2023 (the sum of TRY 15,794.62 amounted to approximately 772 euros at the time when the judgment became final).

THE COURT'S ASSESSMENT

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

A. Admissibility

6. The Government maintained that the applicant could not claim to be the victim of a violation of Article 6 of the Convention on the two following grounds. Firstly, the applicant had been acquitted following the use of an extraordinary remedy. In that respect, the Court of Cassation's decision to quash his final conviction within the context of the extraordinary legal remedy provided for in Article 308 of the CCP, and the Gaziantep Assize Court's subsequent decision to acquit him, had not only acknowledged the

breaches of the law, but had also automatically eliminated the detrimental effects experienced by the applicant. Secondly, the Government argued that Turkish law provided for an accessible and effective legal remedy, namely an action for compensation under Article 323 § 3 of the CCP (taken in conjunction with Article 141 of the same Code) in respect of damage sustained as a result of the partial or full execution of a previous sentence, provided that the conviction had been quashed by the use of an extraordinary remedy and the reopened proceedings had resulted in an acquittal. Moreover, as the applicant had never begun serving his sentence, Article 141 § 1 (e) of the Code of Criminal Procedure had been applicable to him. In fact, he had obtained compensation after having lodged a claim based on Article 141 et seq. of the Code of Criminal Procedure. The applicant had therefore been provided with sufficient redress. On the same grounds, the Government further asked the Court to strike out the present application, arguing that the matter had been "resolved" within the meaning of Article 37 § 1 (b).

7. The applicant did not submit any observations on the admissibility of the application.

1. Whether the applicant could still claim to be the victim of a violation of Article 6 of the Convention

8. The general principles with regard to acquiring and losing victim status may be found in *Sakhnovskiy v. Russia* ([GC], no. 21272/03, §§ 66-71, 2 November 2010) (see also *Tuleya v. Poland*, nos. 21181/19 and 51751/20, §§ 252-54, 6 July 2023). An applicant may lose his or her victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it (see, among many other authorities, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). Furthermore, a full acquittal or the discontinuation of the proceedings against an applicant may constitute appropriate redress in respect of the criminal-limb guarantees of Article 6 of the Convention (see *Sakhnovskiy*, cited above, § 71, with further references), provided that the applicant is no longer affected and has been relieved of any effects to his or her disadvantage (see *Kerimoğlu v. Türkiye*, no. 58829/10, § 46, 6 December 2022, with further references).

9. As regards the first condition, the Court observes that neither the Court of Cassation nor the Gaziantep Assize Court acknowledged any procedural breach, including the alleged breach that formed the basis of the applicant's complaint before the Court. In fact, the Court of Cassation did not quash the decision of the Gaziantep Assize Court to convict the applicant owing to a procedural violation *stricto sensu*, but for the lack of concrete, absolute and credible evidence against him. Accordingly, the Court cannot conclude that the Court of Cassation's decision to quash the applicant's conviction, and his subsequent acquittal, were tantamount to an acknowledgment that his initial

conviction had been in breach of his right to a reasoned judgment under Article 6 § 1 of the Convention (compare also *Kerimoğlu*, cited above, § 50, with further references). On that basis, the Government's objection based on the applicant's alleged lack of victim status is dismissed.

2. Whether the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention

10. As regards the question whether the matter could be considered to have been resolved within the meaning of Article 37 § 1 (b) of the Convention, the Court must examine, firstly, whether the circumstances complained of directly by the applicant still exist and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002; *Hasanov and Others v. Azerbaijan* (dec.), no. 2059/16 and 3 others, 12 September 2023; and *Kerimoğlu*, cited above, § 58).

11. In that connection, the Court notes that the applicant's conviction was quashed, the execution of the sentence imposed was therefore suspended and the applicant obtained compensation pursuant to Article 141 of the CCP for the damage sustained by his arrest and pre-trial detention in a separate set of proceedings. Moreover, while it is true that the applicant does not appear to have served a term of imprisonment as a result of his conviction dated 30 May 2012, which was later quashed owing to the use of an extraordinary remedy, he stressed that his initial trial had "wrecked" his life for four years and two months and that he had had to flee because of his conviction, which had been given in violation of his right to a fair trial, and the subsequent arrest warrant that had been issued against him on 21 May 2013. Similarly, he submitted that he had lost his job and income, and had incurred substantial expenses for the preparation of his defence. As such, the Court takes the view that it cannot be ruled out in the abstract that the notion of "redress" may call for some form of tangible compensation. While the Government did not refute the applicant's submissions on this point, they argued that he could have claimed pecuniary and non-pecuniary compensation under Article 323 of the CCP read in conjunction with Article 141 of the same Code in respect of damage he might have sustained as a result of his previous conviction.

12. The Court reiterates that in *Kerimoğlu* (cited above, §§ 51-57), it found that none of the legal avenues provided for in Articles 141 to 144 or Article 323 § 3 of the CCP was such as to enable a person who had been acquitted as a result of a procedure triggered by the extraordinary legal remedy provided for in Article 308 of the CCP to obtain compensation in respect of the time he or she had served as part of a final conviction. Those conclusions are equally pertinent in the present case, as the applicant's acquittal was brought about by the same remedy stipulated in Article 308 of the CCP. Be that as it may, and assuming that the remedy in question was

accessible to the applicant, the Court observes that the applicant did not begin serving his sentence. In such circumstances, it is not clear whether he could claim compensation for the damage he claims to have sustained as a result of his conviction in accordance with Article 323 § 3 of the CCP for "damage sustained as a result of the partial or full execution of a previous sentence". Nor did the Government submit any case-law examples showing otherwise.

13. It is true that the compensation awarded to the applicant under Article 141 of the CCP for the pecuniary and non-pecuniary damage sustained as a result of his forty-day pre-trial detention may be regarded as affording him sufficient redress for the deprivation of liberty in question. However, that compensation does not cover the alleged damage he had sustained as a consequence of the first trial and the resulting arrest warrant dated 21 May 2013, which stemmed from his previous conviction, the latter having been subsequently quashed by the domestic courts due to the absence of "concrete, absolute and credible evidence against him". The compensation for the applicant's pre-trial detention cannot therefore deprive him of his victim status in respect of his complaints under Article 6 § 1 of the Convention. Nor did the Government claim that there was any other remedy whereby he could obtain redress in respect of the above-mentioned detrimental effects his previous conviction may have entailed for him.

14. Last but not least, and contrary to the Government's contentions, in its decision to acquit the applicant the Gaziantep Assize Court did not indicate that he could lodge a claim for compensation under Article 323 § 3 of the CCP. Similarly, the Government's argument that the applicant's compensation claim under Article 141 of the CCP had been lodged "with reference to" Article 323 § 3 of the CCP was unsupported by any document. In view of the above, and even assuming that the first condition of its assessment under Article 37 § 1 (b) of the Convention has been fulfilled in the present case, the Court cannot conclude that the applicant has been provided with sufficient redress so as to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention. The Government's preliminary objection based on that point must therefore be dismissed.

15. Furthermore, the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

16. The applicant complained of a breach of his right to a reasoned judgment, arguing that his conviction had been based on insufficient reasons, and solely on fictional telephone conversations which had no evidential value.

17. The Government submitted that the Gaziantep Assize Court's decision to convict the applicant (dated 30 May 2012) had contained that court's assessment of all the relevant issues. While the Government conceded that that judgment had later been quashed, they argued that the applicant's resulting acquittal with final effect meant that he had been "returned" to the situation that had existed before he had become a victim: that is to say, the *status quo ante* had thus been restored.

18. The general principles concerning the right to a reasoned judgment have been summarised in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, § 84, 11 July 2017) and in *Ayetullah Ay v. Turkey* (nos. 29084/07 and 1191/08, § 128, 27 October 2020). Without requiring a detailed answer to every argument advanced by the complainant, the duty to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (ibid.).

19. In the present case, the applicant's conviction was quashed because of the lack of any concrete, absolute and credible evidence of his guilt showing beyond any reasonable doubt that he had committed the offence of which he had been accused. Moreover (and more importantly for the Court's assessment of whether the applicant's right to a reasoned judgment under Article 6 § 1 of the Convention was respected), the Court cannot but note that the Court of Cassation found that the Gaziantep Assize Court's judgment dated 30 May 2012 had not included any substantiation or details in respect of its crucial findings as to how the applicant had taken part in the commission of the offence of producing counterfeit currency. This pertained, factually and legally, to the very core of the criminal charges brought against the applicant and it could not, in the Court's view, have been left unanswered by the Gaziantep Assize Court when convicting the applicant (compare also *Kerimoğlu*, cited above, § 68).

20. In view of the foregoing considerations, the Court finds that there has been a violation of Article 6 § 1 of the Convention owing to the domestic courts' failure to state the grounds on which they had convicted the applicant in the initial set of criminal proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. In his observations dated 24 May 2021 on the admissibility and merits of the case, the applicant complained of the excessive length of the proceedings against him and a breach of his right to be presumed innocent. In the Court's view, these new complaints – which the applicant raised after notice of the case had been given to the Government – are not an elaboration of his original complaint to the Court. It follows that this part of the application was lodged out of time and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 150,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

23. The Government contested those claims.

24. The Court notes that the applicant failed to substantiate his pecuniary damage claim; it therefore rejects this claim. On the other hand, it awards the applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

25. Since the applicant did not submit any claim in respect of costs and expenses, there is no call for the Court to award any sum in that respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President