

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

THIRD SECTION

CASE OF SARITAÇ v. TURKEY

(*Application no. 29702/96*)

JUDGMENT

STRASBOURG

7 February 2002

FINAL

07/05/2002

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 Sarıtaç v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 31 August 1999 and 17 January 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 29702/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Ali Bülent Sarıtaç ("the applicant"), on 21 November 1995.

2. The applicant was represented by Mrs Semra Dural Esim, a lawyer practising in Muğla (Turkey). The Turkish Government did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge, in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The President of the Chamber decided that in the interests of the proper administration of justice, the present application should be joined to other applications against the same respondent State raising the same

complaint (applications nos. 28291/95, 29280/95, 26699/96, 29700/96, 29701/96, 29703/96, 29911/96, 29912/96, 29913/96, 31831/96, 31834/96, 31853/96, 31880/96, 31891/96, 31960/96, 32964/96, 32987/96, 32900/96, 33362/96, 33369/96, 33645/96, 34591/96, 34687/96, 39428/96 and 43362/96) (Rule 43 § 2).

7. By a decision of 31 August 1999, having obtained the parties' observations, the Court declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

9. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1)

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Arrest and detention of the applicant

10. On 15 June 1979 the applicant was arrested on suspicion of membership of an illegal organisation, the THKP-C (Turkish People's Liberation Party/Front).

11. On 11 July 1979 the applicant was detained on remand.

B. Trial in the Istanbul Martial Law Court

12. On 15 January 1980 the Military Public Prosecutor filed a bill of indictment with the Martial Law Court against the applicant and 127 other defendants. The Public Prosecutor accused the applicant, *inter alia*, of membership of an illegal armed organisation, namely the THKP/C, whose object was to undermine the constitutional order and replace it with a Marxist-Leninist regime. He further charged the applicant with having been involved in a number of crimes such as armed robbery of public and private properties, and opening fire on several individuals.

13. The prosecution sought the death penalty under Article 146 § 1 of the Criminal Code.

14. On 30 July and 17 October 1980, 24 March 1981 and 23 February 1982 in respect of additional criminal proceedings initiated against the applicant before the Zonguldak, Torba and Izmir Assize Courts *(ağır ceza mahkemesi),* the courts issued decisions of non-jurisdiction on the ground

that the incidents fell within the jurisdiction of the Martial Courts. The cases were joined to the case-file before the İstanbul Martial Court.

15. In a judgment of 8 November 1984 the İstanbul Martial Law Court convicted the applicant of membership of the THKP/C and his involvement in the alleged crimes. It sentenced the applicant to death penalty under Article 146 § 1 of the Criminal Code.

C. Proceedings on appeal

16. As the applicant's sentence exceeded 15 years' imprisonment, his case was automatically referred to the Military Court of Cassation (*Askeri Yargıtay*).

17. On 12 April 1988 the Military Court of Cassation quashed the judgment of the first instance court failed to establish the applicant's involvement in some of the alleged crimes. It referred the case to the İstanbul Martial Law Court.

18. On 17 August 1990 the İstanbul Martial Law Court convicted the applicant under Article 146 § 1 of the Criminal Code and sentenced him to twelve years and six months' imprisonment, permanently debarred him from employment in the civil service and placed him under judicial guardianship. The applicant appealed.

19. Following promulgation of the Law of 27 December 1993, which abolished the jurisdiction of the Martial Law Courts, the Court of Cassation (Y*argıtay*) acquired jurisdiction over the case and on 4 January 1994 the case file was transmitted to it.

20. On 18 April 1995 the Court of Cassation upheld the applicant's conviction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. Article 146 § 1 of the Criminal Code provides:

> "Whosoever shall attempt to alter or amend in whole or in part the Constitution of the Republic of Turkey or to effect a coup d'état against the Grand National Assembly formed under the Constitution or to prevent it by force from carrying out its functions shall be liable to the death penalty."

THE LAW

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

22. The applicant complained about the length of the criminal proceedings against him. He alleged a violation of Article 6 § 1 of the Convention, which provides, as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

23. The Government denied the applicant's allegations. They argued that the case was complex on account of the nature of the charges the applicant faced and the need to organise a large-scale trial involving 128 defendants, including the applicant, all of whose involvement in THKP/C activities had to be established. They averred that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

A. Period to be taken into consideration

24. The Court notes that the proceedings began on 15 June 1979, the date of the applicant's arrest, and ended on 18 April 1995 by the decision of the Court of Cassation. They have thus lasted fifteen years and ten months.

25. The Court's jurisdiction *ratione temporis* only permits it to consider the period of almost eight years and three months that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition (see *Cankoçak v. Turkey* (Sect. 1), nos. 25182/94 and 26956/95, judgment of 20 February 2001, § 26). It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (*ibid*., § 25). On the critical date the proceedings had already lasted seven years, seven months and two weeks.

B. Reasonableness of the length of proceedings

26. The Court observes that the Martial Law Court took almost five years and six months to reach its first verdict. It took the Military Court of Cassation more than three years to rule on the first appeal. The Court points out that the Martial Law Court reached its second verdict on 17 August 1990, approximately two years after the case was referred to it. Furthermore, it took three years and five months for the Court of Cassation to acquire jurisdiction over the case and obtain the case file. The Court considers that both at first instance and in the appeal proceedings there were

substantial delays, which cannot be explained in terms of the admitted complexity of the case and must be considered attributable to the national authorities.

27. Having regard to all the evidence before it and to its case-law on the subject (see *Şahiner v. Turkey* (Sect. 1), no. 29279/95, judgment of 4 September 2001, to be published in ECHR 2001-...), the Court holds that the length of the proceedings in issue did not satisfy the "reasonable time" requirement.

28. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed the sum of 2,000,000 French francs by way of compensation for pecuniary and non-pecuniary damage. He referred in this connection to the excessive length of the proceedings and to his claims, *inter alia*, that he was arbitrarily detained in prison for eleven years and that he had suffered pecuniary and non-pecuniary damage as he could not find a job for a very considerable period and benefit from social security opportunities.

31. The Government did not make any comments on the applicant's claim.

32. The Court considers that the applicant must have suffered a certain amount of distress, having regard to the total length of the proceedings against him. Deciding on an equitable basis, it awards him the sum of 15,250 Euros.

B. Costs and expenses

33. The applicant did not claim a specific amount for reimbursement of legal costs and expenses incurred. He left the amount to be assessed by the Court.

34. The Government did not make any observations under this head of claim either.

35. The applicant clearly incurred some expenses in the Convention proceedings. The Court considers it reasonable to award the applicant 1,200 Euros by way of reimbursement of his costs and expenses.

C. Default interest

36. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4,26% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to disjoin the application from other applications joined pursuant to Rule 43 § 1;

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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:
      (i) 15,250 Euros (fifteen thousand two hundred and fifty Euros) in respect of non-pecuniary damage;
      (ii) 1,200 (one thousand two hundred Euros) in respect of costs and expenses, together with any tax that may be chargeable;
   (b) that simple interest at an annual rate of 4,26% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 7 February 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	Georg RESS President