

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

SECOND SECTION

CASE OF AFŞAR v. TURKEY

(Application no. 26998/04)

JUDGMENT

STRASBOURG

15 November 2011

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



In the case of Afşar v. Turkey,

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

David Thór Björgvinsson, *President,*
Guido Raimondi,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 26998/04) 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 Hamit Afşar ("the applicant"), on 21 May 2004.

2. The applicant was not represented by a lawyer. The Turkish Government ("the Government") were represented by their Agent.

3. On 4 September 2009 the President of the Second Section decided to give notice of the application to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Balıkesir.

5. The applicant is a doctor.

6. On 23 November 1998, another doctor, V.B., brought a case against the applicant before the Ayvalık Civil Court, requesting compensation for defamation. V.B. alleged that the applicant had diffused false information among his patients to the effect that he had been selling a certain unauthorised medicine. V.B. relied on a note obtained from a certain patient A.S., in which the name of the medicine, as well as his name and work address were written. According to the plaintiff, this note was written by the applicant in order to damage his reputation.

7. In the course of the proceedings, the court heard statements from several witnesses such as doctors and nurses working at the health centre, who confirmed V.B.'s account of the facts. In particular, some of the witnesses submitted that they had seen A.S. with this note.

8. At the hearing on 8 June 2000 the applicant admitted having written the name of the medicine on the paper, but denied having written the other notes.

9. It appears from the case file that the applicant did not request the court to hear A.S. during the proceedings.

10. On 4 February 2003 the court, on the basis of the witness testimonies as well as the statements given at the hearing of 8 June 2000, found it established that the applicant had directed the patients towards V.B. and therefore ordered the applicant to pay compensation.

11. On 11 March 2003 the applicant appealed. In his appeal petition, the applicant submitted *inter alia* that the trial court had failed to hear evidence from A.S.

12. On 10 July 2003, finding the judgment of the first instance court in line with domestic law, the Court of Cassation rejected the applicant's appeal.

13. On 29 March 2004 the Court of Cassation dismissed a request by the applicant for rectification of the judgment.

THE LAW

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

14. 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, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

15. The Government contested that argument. They maintained that the impugned proceedings could not be considered to have been excessively long in view of the complexity of the case. They concluded therefore that there had been no delay in the proceedings that may be attributable to the State.

16. The period to be taken into consideration began on 23 November 1998 and ended on 29 March 2004. It thus lasted five years and four months for two levels of jurisdiction.

A. Admissibility

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. 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 *Frydlender v. France* [GC], no. 30979/96, §§ 42-46, ECHR 2000-VII, and *Daneshpayeh v. Turkey*, no. 21086/04, §§ 26-29, 16 July 2009).

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant further complained under Article 6 § 2 of the Convention that his right to the presumption of innocence had been breached, as the domestic court assumed from the start that the applicant was guilty. He argued under Article 6 §§ 3 (b) and (c) of the Convention that he had been denied a fair hearing as the decision of the Court of Cassation, as well as the decision on the request for rectification of the judgment, had lacked reasoning. He maintained finally under Articles 6 § 1 and 6 § 3 (d) of the Convention that the first-instance court had failed to hear the crucial witness, A.S.

21. In the light of all the material in its possession, the Court finds that the above submissions by the applicant do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (see, in particular, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I; *Kabasakal and Atar v. Turkey*, nos. 70084/01 and 70085/01, 19 September 2006; and *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 8,500 euros (EUR) in respect of non-pecuniary damage for his mental and physical suffering and distress.

24. The Government contested the claim as being excessive.

25. The Court considers that the applicant must have sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Ruling on an equitable basis, it awards him EUR 2,400 under that head.

26. The applicant did not submit any claims for pecuniary damage. Accordingly, the Court considers that there is no call to award him any sum under this head.

B. Costs and expenses

27. The applicant also claimed EUR 3,600 for the costs and expenses, EUR 260 of which is requested for expenses incurred before the domestic courts and the rest for the compensation he had to pay to the plaintiff as a result of the defamation proceedings.

28. The Government contested these claims.

29. Regard being had to the documents in its possession and to its case-law, as well as the fact that the applicant was not represented by a lawyer, the Court rejects the claim for costs and expenses in the domestic proceedings and finds that there is no call to award the applicant any amount under this head.

C. Default interest

30. 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 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, EUR 2,400 (two thousand four hundred euros) to be converted into Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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 15 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Deputy Registrar	David Thór Björgvinsson President