

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

SECOND SECTION

DECISION

Application no. 55532/09
Mehmet KOÇ
against Turkey

The European Court of Human Rights (Second Section), sitting on 22 May 2012 as a Committee composed of:

Isabelle Berro-Lefèvre, *President,*
Guido Raimondi,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 October 2009,

Having regard to the declaration submitted by the respondent Government on 1 February 2012, requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mehmet Koç, is a Turkish national, who was born in 1970 and lives in Ankara. He was represented before the Court by Mr B. Yıldız, a lawyer practising in Ankara.

The Turkish Government ("the Government") were represented by their Agent.

The facts of the case, as submitted by the parties, may be summarised as follows.

On an unspecified date the applicant was taken into police custody on suspicion of falsifying passports and visas.

On 11 November 2001 he was examined by a doctor at the Forensic Medicine Institute, who noted four or five superficial scratches on his right upper gluteal region and concluded that the injury rendered him unfit for work for two days.

On 11 November 2001 the applicant was brought before the Ankara public prosecutor and the investigating judge. In his statements before the latter, he maintained that he had been beaten and coerced into giving statements under duress.

Subsequently, on 14 November 2001 the Ankara public prosecutor issued an indictment accusing the applicant of fraud and falsification of documents by way of forming an illegal organisation, pursuant to Articles 342 and 504 of the Penal Code in force at the time (Law no. 765).

At the first hearing before the Ankara Assize Court, which was held on 25 December 2001, the applicant retracted his police statements, alleging that they had been taken under ill-treatment.

On 15 September 2003 the Ankara Assize Court convicted the applicant as charged and sentenced him to eleven months and ten days' imprisonment. The court did not indicate anything as to the applicant's allegations of having been beaten.

The Court of Cassation quashed that judgment on 28 June 2005, holding that the case should be re-evaluated in the light of the recent Penal Code (Law no. 5237), which had entered into force on 1 June 2005. The higher court did not state anything as regards the applicant's alleged ill-treatment.

On 1 February 2006 the first-instance court convicted the applicant only of fraud and sentenced him to one year imprisonment, finding that there was no equivalent of his acts in the recent Penal Code.

On 16 May 2008 the Court of Cassation quashed the judgment of the Ankara Assize Court once again, pointing out that the legislative changes could call for the application of the suspension of the pronouncement of the judgment.

On 9 September 2008 the first-instance court sentenced the applicant to ten months' imprisonment, concluding that the conditions for the application of the suspension of the pronouncement of the judgment had not been fulfilled.

Finally, on 27 April 2009 the Court of Cassation upheld the judgment of the first-instance court with a minor amendment.

COMPLAINTS

The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment during his time at police custody. He also argued that no investigation was carried out into his allegations of ill-treatment.

Relying upon Article 6 of the Convention, the applicant complained about the excessive length of the criminal proceedings against him. He further alleged under the same Article that the domestic court had failed to assess the facts and the evidence correctly.

The applicant submitted under Article 7 of the Convention that he had been sentenced because of an act which did not constitute a criminal offence in the recent Penal Code, which had entered into force during the course of the proceedings.

THE LAW

1. As to the complaint about the length of proceedings

The applicant complained about the length of the criminal proceedings instigated against him. He relied on Article 6 § 1 of the Convention.

After unsuccessful friendly-settlement negotiations, by a letter dated 1 February 2012, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "Je déclare que le Gouvernement de la République de Turquie offre de verser au requérant, M. Mehmet Koç, la somme de 4 100 euros, couvrant tous [préjudices] confondus, somme qu'il considère comme appropriée à la lumière de la jurisprudence de la Cour.
>
> Cette somme sera convertie en livres turques au taux applicable à la date du paiement, et exemptes de toute taxe éventuellement applicable. Elle sera payée dans les trois mois suivant la date de la notification de la décision de la Cour rendue conformément à l'article 37 § 1 de la Convention européenne des droits de l'homme. A défaut de règlement dans ledit délai, le Gouvernement s'engage à verser, à compter de l'expiration de celui-ci et jusqu'au règlement effectif de la somme en question, un intérêt simple à un taux égal à celui de la facilité de prêt marginal de la Banque centrale européenne, augmenté de trois points de pourcentage. Ce versement vaudra règlement définitif de l'affaire.
>
> Le Gouvernement considère que la procédure interne engagée par la partie requérante a connu une durée excessive au sens de la jurisprudence bien établie de la

> Cour (*Daneshpayeh c. Turquie*, no 21086/04, 16 juillet 2009). Il invite respectueusement la Cour à dire qu'il ne se justifie plus de poursuivre l'examen de la requête et à la rayer du rôle conformément à l'article 37 de la Convention. "

In a letter of 5 March 2012 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application."

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wish the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2004-III; also *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; *Sulwińska v. Poland* (dec.), no. 28953/03; *Stark and Others v. Finland* (striking out), no. 39559/02, § 23, 9 October 2007; *Silva Marrafa v. Portugal* (dec.), no. 56936/08, 25 May 2010; *Karal v. Turkey* (dec.), no. 44655/09, 29 March 2011; and *Barış İnan v. Turkey* (dec.), no. 20315/10, 24 May 2011).

The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007; and *Daneshpayeh v. Turkey*, no. 21086/04, §§ 28-29, 16 July 2009).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

In view of the above, it is appropriate to strike this part of the case out of the list.

2. As to the others complaints

As regards the applicant's complaint under Article 3 of the Convention about his alleged ill-treatment during his time at police custody, the Court recalls that according to its established case law, in the absence of domestic remedies or if such remedies are judged to be ineffective, the six-month time-limit runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, ECHR 2002-II) or from the time when the applicant becomes aware, or should have become aware, of the ineffectiveness of the remedies (see *Paul and Audrey Edwards v. United Kingdom* (dec.), no. 46477/99, 7 June 2001). In the present case, the applicant alleged that he had been subjected to ill-treatment in November 2001. The Court finds that it is not clear from the case-file whether the applicant raised this issue before the Court of Cassation. However, even assuming that he did, the applicant must be considered to have been aware of the lack of any effective criminal investigation on 28 June 2005 at the latest, the date when the Court of Cassation quashed the sentence given in respect of him. Having regard to the applicant's prolonged inactivity, the Court concludes that this part of the application, introduced on 12 October 2009, is inadmissible for the applicant's failure to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention.

In so far as the applicant complained under Article 6 of the Convention that the proceedings before the Ankara Assize Court had not been fair, the Court notes that it is not a court of fourth instance and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 49, ECHR 2001-II). It also reiterates that it is not its task to review the assessment of evidence by a national court, unless it is arbitrary or manifestly unreasonable (see *Camilleri v. Malta* (dec.), no. 51760/99, 16 March 2000). In the present case, there is no appearance of arbitrariness in the domestic court's evaluation of evidence and national law. The Court therefore finds that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

Finally, as for the complaint under Article 7 of the Convention concerning the applicant's imprisonment for an act which allegedly did not constitute an offence under the recent Penal Code (Law no. 5237), the Court observes that following the decision of the Court of Cassation which quashed its judgment on 28 June 2005, the Ankara Assize Court evaluated the case anew and convicted the applicant only of fraud, finding that there

was no equivalent of his acts in the recent Penal Code. Following that re-evaluation, the applicant's sentence was reduced. In the light of the foregoing, the Court contends that the domestic court took account of the changes in the relevant legislation and ruled on the applicant's case accordingly. It therefore holds that this complaint be rejected for being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, in so far as it concerns the complaint about the length of proceedings;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Isabelle Berro-Lefèvre
President