



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

SECOND SECTION

CASE OF DEDEOĞLU v. TURKEY

(Application no. 16444/07)

JUDGMENT

STRASBOURG

25 January 2011

FINAL

25/04/2011

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

In the case of Dedeoğlu v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 4 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 16444/07) 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 Cantürk Dedeoğlu (“the applicant”), on 5 April 2007.

2. The applicant was represented by Mr E. Cinmen, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 27 August 2009 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 (former Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in İstanbul.

5. On 11 December 2000 the applicant was arrested on suspicion of fraud.

6. On 12 February 2001 he was released pending trial.

7. On 29 November 2005 the İstanbul Assize Court sentenced the applicant to two years and one month's imprisonment.

8. On 19 October 2006 the Court of Cassation upheld the judgment of 29 November 2005.

THE LAW

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

9. 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. The Government contested that argument.

10. The period to be taken into consideration began on 11 December 2000 when the applicant was arrested and ended on 19 October 2006 when the Court of Cassation upheld the first instance court's judgment. It thus lasted five years and ten months before two levels of jurisdiction.

11. The Government put forward various preliminary objections concerning non-exhaustion of domestic remedies and asked the Court to dismiss the complaint under Article 6 § 1 of the Convention, as required by Article 35 § 1 of the Convention.

12. The Court notes that it has already examined similar submissions made by the respondent Government in *Daneshpayeh v. Turkey* (no. 21086/04, §§ 35-38, 16 July 2009). The Government have not submitted any arguments which could lead the Court to reach a different conclusion in the instant case. Consequently, the Court rejects the Government's preliminary objections as to the exhaustion of domestic remedies.

13. The Government further argued that the applicant has failed to comply with the six month rule under Article 35 of the Convention.

14. The Court observes that in the present case the final domestic decision was taken on 19 October 2006 by the Court of Cassation and the application was introduced on 5 April 2007 i.e. within six months following the domestic decision of 19 October 2006. The applicant must therefore be considered to have complied with the six-month rule provided under Article 35 § 1 of the Convention. The Government's objection must therefore be rejected.

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

16. As regards the merits, the Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of

the case, the conduct of the applicant and of the relevant authorities (*Daneshpayeh*, cited above, § 26).

17. 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 (*Daneshpayeh*, cited above).

18. 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 VIOLATION OF THE CONVENTION

19. The applicant complained under Article 6 of the Convention that he had been denied a fair hearing as the domestic courts had erred in their assessment of the facts. He argued under the same provision that the decisions of the domestic courts had lacked adequate reasoning.

20. 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. It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see, in particular, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 617,010 Turkish Liras (TRY) (approximately 337,105 euros (EUR)) in respect of pecuniary damage and TRY 50,000 (approximately EUR 25,119) in respect of non-pecuniary damage.

23. The Government contested these claims.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the relevant

claim. However, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

25. The applicant also claimed TRY 20,000 (approximately EUR 10,047) for the legal fees incurred before the domestic courts and the Court without submitting any supporting documents.

26. The Government contested these claims.

27. The Court makes no award under this head as the applicant has failed to submit any documentary evidence in support of his claims.

C. Default interest

28. 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. *Declared* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Held* that there has been a violation of Article 6 § 1 of the Convention;
3. *Held*
 - (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 3,000 (three thousand euros), plus any tax that may be chargeable, to be converted into Turkish liras at the rate applicable at 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. *Dismissed* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President