



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

THIRD SECTION

CASE OF DEDE AND OTHERS v. TURKEY

(Application no. 32981/96)

JUDGMENT

STRASBOURG

7 May 2002

FINAL

07/08/2002

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 Dede and Others v. Turkey,

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

Mr G. RESS, *President*,

Mr P. KŪRIS,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr K. TRAJA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 18 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 32981/96) 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 four Turkish nationals, Mr Atalay Dede, Mr Mehmet Kumral, Mr Hüseyin Hakkı Zabcı and Mehmet Akın Dirik (“the applicants”), on 30 May, 14 and 18 June 1996 respectively.

2. Mr Dede and Mr Dirik were represented before the Court by Mrs Nurten Çağlar and Mr Mehdi Bektaş respectively, lawyers practising in Ankara. Mr Kumral and Mr Zabcı did not designate a lawyer for the purposes of the proceedings before the Court. The Turkish Government (“the Government”) were represented by their Agent, Ambassador Tugay Uluçevik.

3. The applicants complained under Article 6 § 1 of the Convention about the length of the proceedings against them.

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 § of the Convention and Rule 29 § 1).

6. By a decision of 17 October 2000 the Court declared the application admissible.

7. 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.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Arrest and detention of the applicants

9. In January and February 1981 the applicants were arrested by policemen and placed in police custody. They were accused of membership of an illegal organisation, the Dev-Yol (Revolutionary Way).

10. On 15 April, 11 May and 9 July 1981 the Ankara Martial Law Court (*sıkıyönetim mahkemesi*) ordered the applicants' detention on remand.

B. Trial in the Ankara Martial Law Court

11. On 26 February 1982 the Military Public Prosecutor filed a bill of indictment with the Ankara Martial Law Court setting out charges against 723 defendants, including the applicants. He accused the applicants of membership of an organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime, contrary to Article 146 § 1 of the Turkish Criminal Code

12. On different dates the applicants were all released pending trial by the Ankara Martial Law Court.

13. After martial Law was lifted, the Ankara Martial Law Court took the name of Martial Law Court attached to the 4th Army Corps.

14. On 19 July 1989 the Martial Law Court convicted the applicants and sentenced them to terms of imprisonment. The applicants appealed to the Military Court of Cassation (*Askeri Yargıtay*).

C. Proceedings on appeal

15. Following promulgation of the Law of 26 December 1994, which abolished the jurisdiction of the martial law courts, the Court of Cassation (*Yargıtay*) acquired jurisdiction over the cases and the files were sent to it.

16. On 28 December 1995 the Court of Cassation upheld Mr Mehmet Kumral's and Mr Hüseyin Hakkı Zabcı's conviction. It quashed the convictions of Mr Dede and Mr Dirik and referred the cases to the Ankara Assize Court (*ağır ceza mahkemesi*). The criminal proceedings are still pending before the latter court.

II. RELEVANT DOMESTIC LAW

17. 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

18. The applicants complained about the length of the criminal proceedings against them. They 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...”

19. The Government rejected the allegation. They argued that the case was complex on account of the nature of the charges the applicants faced and the need to organise a large-scale trial involving 723 defendants, including the applicants, all of whose involvement in Dev-Yol 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. They further pointed out that, pursuant to former Article 25 of the Convention, Turkey has recognised the Court's jurisdiction only in respect of facts or events that have occurred since 22 January 1990.

A. Period to be taken into consideration

20. The Court notes that the proceedings began on 22 January and 15 and 16 February 1981, the dates of the applicants' arrest, and ended on 28 December 1995 in respect of Mr Kumral and Mr Zabcı. They are still pending in respect of Mr Dede and Mr Dirik. They have therefore lasted almost fourteen years, ten months and thirteen days in respect of Mr Kumral and Mr Zabcı. The proceedings have already lasted more than twenty-one years in respect of Mr Dede and Mr Dirik.

21. The Court's jurisdiction *ratione temporis* only permits it to consider the period of almost eight years and eleven months in respect of Mr Kumral and Mr Zabcı and fifteen years and two months in respect of Mr Dede and Mr Dirik that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights (see *Cankocak 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 five years, eleven months and thirteen days in respect of Mr Kumral and Mr Zabcı and almost six years in respect of Mr Dede and Mr Dirik.

B. Reasonableness of the length of proceedings

22. The Court observes that the Martial Law Court took almost seven years and five months to reach a verdict. It took the Military Court of Cassation more than four years to rule on the appeal. Furthermore, the Court of Cassation gave judgment on 28 December 1995, approximately one year after it had been seized of the case. Subsequent to the latter judgment the cases of Mr Dede and Mr Dirik were referred to the Ankara Assize Court, where the criminal proceedings are still pending, and they have already lasted more than twenty-one years before that court. 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.

23. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants Mr Zabcı, Mr Kumral and Mr Dirik claimed 185,781, 167,515 and 500,000 French francs (FRF) respectively for pecuniary and non-pecuniary damage, whereas Mr Dede did not specify his claim and merely asked the Court to award him just satisfaction. The applicants referred in this connection to the excessive length of the proceedings and to their claims, *inter alia*, that they were arbitrarily held in prison for years and that they had suffered pecuniary and non-pecuniary damage as they lost their jobs.

27. The Government did not make any comments on the applicants' claims.

28. The Court considers that the applicants must have suffered a certain amount of distress, having regard to the total length of the proceedings against them. Deciding on an equitable basis, it awards them each the sum of 15,250 euros (EUR).

B. Costs and expenses

29. The applicants did not specify their claims for reimbursement of legal costs and expenses incurred. They left the matter to be assessed by the Court.

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

31. The applicants clearly incurred some expenses in the Convention proceedings. The Court considers it reasonable to award the applicants each EUR 1,200 by way of reimbursement of their costs and expenses.

C. Default interest

32. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants each, 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) EUR 15,250 (fifteen thousand two hundred and fifty euros) in respect of non-pecuniary damage;
 - (ii) EUR 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;
3. *Dismisses* the remainder of the applicants' claims for just satisfaction.

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

Vincent BERGER
Registrar

Georg RESS
President