



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

FOURTH SECTION

CASE OF GÜMÜŞTEN v. TURKEY

(Application no. 47116/99)

JUDGMENT

STRASBOURG

30 November 2004

FINAL

28/02/2005

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 Gümüşt en v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr R. TÜRME N,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 February 2004 and on 9 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 47116/99) 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, Ş emsettin Gümüşt en ("the applicant"), on 19 November 1998.

2. The applicant was represented by Mr Ö. Öneren, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged under Article 6 § 1 of the Convention that the criminal proceedings brought against him had not been concluded within a "reasonable time".

4. The application was allocated to the Fourth 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.

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

6. By a decision of 10 February 2004 the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1952 and lives in Mardin.

9. On 22 December 1980 the applicant was arrested and taken into police custody on suspicion of membership of an illegal organisation.

10. On 10 March 1981 the Diyarbakır Martial Law Court ordered the applicant's detention on remand.

11. On 14 September 1981 the public prosecutor's office at the Diyarbakır Martial Law Court filed a bill of indictment with the latter, accusing the applicant of membership of an illegal organisation. The public prosecutor's office requested that the applicant be convicted and sentenced under Article 168 § 1 of the Criminal Code.

12. On 19 February 1985 the Diyarbakır Martial Law Court convicted the applicant as charged and sentenced him to twenty-four years' imprisonment. Before the Diyarbakır Martial Law Court, the applicant was tried together with 624 co-suspects.

13. Following the applicant's appeal, his case was referred to the Military Court of Cassation.

14. On 10 April 1990 the Military Court of Cassation quashed the judgment of the Diyarbakır Martial Law Court on the ground that latter had misinterpreted the domestic law in respect of the offence in question.

15. On 29 July 1990 the applicant was released from detention.

16. Subsequent to promulgation of Law no. 3953 on 27 December 1993, which abolished the jurisdiction of the Martial Law Courts, the Diyarbakır Assize Court acquired jurisdiction over the applicant's case.

17. On 13 July 1998 the Diyarbakır Assize Court held that the offence fell within the scope of Article 168 § 2 and consequently the statutory time-limit under Articles 102 and 104 of the Criminal Code had expired. It accordingly ordered that the criminal proceedings against the applicant be terminated.

18. On 10 September 1998 the judgment became final in respect of the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. A description of the relevant domestic law and practice can be found in *Şahiner v. Turkey*, no. 29279/95, ECHR 2001-IX.

THE LAW

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

20. The applicant complained that the criminal proceedings against him had not been concluded within a reasonable time as required by 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...”

21. The Government disputed the applicant's allegation. They argued that the length of the criminal proceedings brought against the applicant could not be considered unreasonable long, given the difficulties involved in the examination of thousands of files. The Government further highlighted the complexity of the case and the nature of the offences with which the applicant was charged. They maintained that the courts had to deal with a trial involving 624 defendants, including the applicant, whose activities and connections with the other defendants had to be established. In this connection, the Government pointed out that the Diyarbakır Martial Law Court's judgment of 19 February 1985 consisted of 1,977 pages and that there were ninety prosecution files in the archives belonging to this case. They further asserted that when the original judgment and conviction of the applicant was quashed, the proceedings against 188 suspects, including the applicant, recommenced before the Diyarbakır Assize Court. The latter had to establish the whereabouts of the suspects in order to take their testimonies as well as the testimonies of the witnesses. The Government contended 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

22. The Court notes that the proceedings began on 22 December 1980, the date of the applicant's arrest, and ended on 10 September 1998, when the Diyarbakır Assize Court's judgment became final. They therefore lasted seventeen years, eight months and twenty-seven days.

23. The Court's jurisdiction *ratione temporis* only permits it to consider the period of eleven years seven months and twenty-two days 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. It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (see, *Şahiner*, cited above, § 22, and *Cankocak v. Turkey*, nos. 25182/94 and

26956/95, §§ 25-26, 20 February 2001). On that critical date the proceedings had already lasted more than six years.

B. Reasonableness of the length of proceedings

24. The Court considers that there were substantial delays both at first instance and in the appeal proceedings. It can accept that the case mounted against the applicant and the large number of other defendants was complex. That being said, it cannot but note that the proceedings have lasted seventeen years, eight months and twenty-seven days of which eleven years seven months and twenty-two days are within the scope of the Court's consideration. The length of this period is excessive and cannot be justified by the complexity of the case alone. In the Court's opinion, the length of the proceedings can only be explained by the failure of the domestic court to deal with the case diligently (see, in this connection, the above-mentioned *Cankoçak* and *Şahiner* judgments at §§ 32 and 27 respectively).

25. Having regard to all the evidence before it and to its case-law on the subject (see, *Cankoçak*, cited above, § 33, and *Şahiner*, cited above, § 30), the Court finds that the length of the proceedings at issue did not satisfy the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 33,463 United States dollars (USD) (27,470 euros (EUR)) by way of pecuniary damage for loss of earnings during the time he spent in prison, his family's expenses incurred during prison visits and his expenses for representation by counsel in the domestic proceedings. He also claimed 2,000,000 French francs (FF) (EUR 304,898) for non-pecuniary damage.

29. The Government submitted that the applicant had not submitted any evidence in support of his alleged pecuniary damage. In this connection, they pointed out that the applicant had not provided the Court with any receipts or documents in respect of his claims. As regards non-pecuniary

damage, the Government contended that if the Court were to find a violation, that finding in itself would constitute sufficient compensation.

30. The Court reiterates that it can only award reparation in respect of its finding that there has been a violation of the Convention as regards the unreasonable length of the criminal proceedings and make its calculation accordingly. It considers that the applicant should be awarded some compensation for non-pecuniary damage since he must have suffered distress and anxiety due to the uncertainty created by the excessive length of the criminal proceedings. Deciding on an equitable basis and in line with its case-law, the Court awards him the sum of EUR 12,000.

B. Costs and expenses

31. The applicant did not submit any receipts or invoices indicating the costs and expenses that he had incurred before the Court. He left it to the Court to assess the appropriate amount.

32. The Government did not express an opinion.

33. The Court notes that the applicant, who was represented by a lawyer, did not have the benefit of legal aid. In all the circumstances of the case the Court awards the applicant EUR 2,000 under this head.

C. Default interest

34. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;
2. *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, together with any tax that may be applicable, to be converted into Turkish liras at the rate applicable on the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;

(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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President