



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

FOURTH SECTION

CASE OF EGE v. TURKEY

(Application no. 47117/99)

JUDGMENT

STRASBOURG

29 March 2005

FINAL

29/06/2005

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 Ege v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr R. TÜRMEŖEN,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 10 February 2004 and on 8 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 47117/99) 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, Mehmet Ali Ege ("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 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.

4. 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).

5. On 10 February 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the criminal proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed Fourth Section.

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 1959 and lives in Mardin.

9. On 29 September 1980 the applicant was arrested and taken into police custody on suspicion of membership of an illegal organisation.

10. On 7 January 1981 the Diyarbakır Martial Law Court ordered the applicant's detention on remand.

11. On 14 September 1981 the public prosecutors' 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 prosecutors' 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 of membership of an illegal organisation and sentenced him to twenty-four years' imprisonment pursuant to Article 168 §1 of the Criminal Code. Before the Diyarbakır Martial Law Court the applicant was tried together with 623 other suspects.

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

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

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

16. On 13 July 1998 the Diyarbakır Assize Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time limit under Articles 102 and 104 of the Criminal Code had expired.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. A description of the relevant domestic law and practice can be found in *Şahiner c. Turquie*, n° 29279/95, CEDH 2001-IX.

THE LAW

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

18. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

“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 contested that argument. They argued that the criminal proceedings brought against the applicant could not be considered to have taken unreasonably long, given the difficulties involved in the collection of the evidence, hearing witnesses and the testimonies of the defendants. They maintained that the courts had to deal with a trial involving 624 defendants, including the applicant, whose activities and connections with the terrorist organisation 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 1,877 pages and comprised of three binders. They further stated that the overall case-file was composed of eighty-eight binders.

20. They 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 Government stressed that the domestic courts dealt with the case at issue with the diligence required and that the authorities carefully examined the case files in order to prevent any unjust decision. 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. Finally, the Government averred that even if the procedures could be considered to have lasted unreasonably long, this was of marginal importance to the applicant.

21. The Court notes that the proceedings began on 29 September 1980, the date of the applicant's arrest, and ended on 13 July 1998, when the Diyarbakır Assize Court ordered the termination of the criminal proceedings against the applicant. They therefore lasted seventeen years, nine months and fourteen days.

22. The Court's jurisdiction *ratione temporis* only permits it to consider the period of eleven years five months and sixteen 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 *Cankoçak 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.

A. Admissibility

23. The Court notes that the application 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.

B. Merits

24. 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 the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

25. 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, nine months and fourteen days of which eleven years five months and sixteen 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 courts to deal with the case diligently (see, in this connection, *Cankoçak*, cited above § 32, and *Şahiner*, cited above, § 27).

26. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of considerable importance to him.

27. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 58,149 United States Dollars (USD) (44,879 euros (EUR)) by way of pecuniary damage for loss of earnings as a teacher during the period between 21 August 1981 and 24 August 1995, 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 (EUR 304,898) for non-pecuniary damage.

31. The Government contested the amounts requested by the applicant. They submitted that the applicant had not submitted any evidence in support of his alleged pecuniary or non-pecuniary loss. They also submitted that the Court should only award an equitable amount of non-pecuniary damage to the applicant, without allowing the compensation procedure to be exploited and that it should take as its point of reference the amounts awarded by the Court in similar applications.

32. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

33. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of his detention and trial – which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis and having regard to the criteria laid down in its case-law (see *Ahmet Koç v. Turkey*, no. 32580/96, § 37, 22 June 2004), the Court awards the applicant EUR 12,000 under this head.

B. Costs and expenses

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

35. The Government maintained that only actually incurred expenses can be reimbursed. In this connection, they submitted that all costs and

expenses must be documented by the applicant or his representative and that rough figures or rough lists cannot be considered as relevant and necessary documents to prove the expenditure.

36. The Court notes that the applicant, who was represented by a lawyer, did not have the benefit of legal aid. Deciding on an equitable basis and having regard to the criteria laid down in its case-law (see, among other authorities, *Ahmet Koç*, cited above, § 40, *Çaloğlu v. Turkey*, no. 55812/00, § 33, 29 July 2004, and *Yanikoğlu v. Turkey*, no. 46284/99, § 45, 14 October 2004), the Court considers it reasonable to award the applicant EUR 2,000 in respect of costs and expenses.

C. Default interest

37. 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 remainder of the application admissible;
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 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President