



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

SECOND SECTION

CASE OF ERTÜRK v. TURKEY

(Application no. 15259/02)

JUDGMENT

STRASBOURG

12 April 2005

FINAL

12/07/2005

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 Ertürk v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEŒ,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 15259/02) 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 Hasan Ertürk (“the applicant”), on 31 January 2002.

2. The applicant was represented by Mr M. Bektaş, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 21 January 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1959 and lives in Ankara.

5. On 21 November 1983 the applicant was arrested and taken into police custody on suspicion of membership of an illegal organisation, the Dev-Yol (*Devrimci Yol* - the Revolutionary Way).

6. On 30 December 1983 the Ankara Martial Law Court ordered the applicant’s detention on remand.

7. On 14 December 1988 the applicant was released pending trial.

8. On 19 July 1989 the Ankara Martial Law Court convicted the applicant of membership of an illegal organisation and sentenced him to seven years' imprisonment.

9. On 28 December 1996 the Court of Cassation quashed the judgment of the Ankara Martial Law Court on the ground that the latter had misinterpreted the domestic law in respect of the offence in question.

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

11. On 6 May 1996 the Ankara Assize Court commenced the applicant's trial.

12. On 28 May 2004 the applicant was convicted of attempting to undermine the constitutional order under Article 146 of the Criminal Code. The first-instance court however held that there was no need for the applicant's imprisonment, taking into account his previous custody and detention on remand.

13. The proceedings are still pending.

THE LAW

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

14. 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..."

15. The Government contested that argument.

16. The period to be taken into consideration began on 21 November 1983, when the applicant was arrested and taken into police custody and has not yet ended. It has thus lasted more than twenty one years.

17. The Court's jurisdiction *ratione temporis* only permits it to consider the period of eighteen years 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 v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX, and *Cankocak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001). On that crucial date the proceedings had already lasted more than three years.

A. Admissibility

18. The Government submitted that the application was outside the Court's competence *ratione temporis*.

19. The Court notes that it has already dismissed such an objection in its *Şahiner* judgment (cited above, § 21). It finds no particular circumstances in the instant case which would require it to depart from its findings in the aforementioned case.

20. The Government further submitted that the applicant had failed to exhaust domestic remedies as the criminal proceedings against him were still pending.

21. The Court reiterates that the obligation to exhaust domestic remedies requires only that an applicant make normal use of effective and sufficient remedies, that is those capable of remedying the situation at issue (see *Karashev v. Finland* (dec.), no. 31414/96, ECHR 1999-II).

22. The Court considers that the criminal proceedings against the applicant cannot be regarded as an effective remedy as alleged by the Government since they are not capable of remedying the applicant's Convention grievance.

23. Accordingly, the Court rejects the Government's preliminary objections.

B. Merits

24. The Government submitted that the case was complex, having regard to the charges the applicant faced and the need to organise a large-scale trial involving 723 defendants. They contended that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

25. The applicant contended that the criminal proceedings brought against him had already lasted twenty one years and were still pending.

26. The Court considers that there were substantial delays both at first instance and in the appeal proceedings. It can accept that the case brought against the applicant and the large number of other defendants was complex. That being said, it cannot but note that the proceedings have lasted well over twenty one years, of which eighteen years fall within the Court's jurisdiction. The length of this period is excessive and cannot be justified with reference to considerations of complexity 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 *Cankoçak* and *Şahiner* judgments, cited above, §§ 32 and 27 respectively).

27. Having regard to all the evidence before it and to its case-law on the subject (see the *Cankoçak* and *Şahiner* judgments, cited above, §§ 33 and

30 respectively), the Court finds that the length of the proceedings at issue did not satisfy the “reasonable time” requirement.

28. There has 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 30,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested the claim.

32. The Court considers that the applicant must have suffered a certain amount of distress. Ruling on an equitable basis, it awards him EUR 14,000 under this head.

B. Costs and expenses

33. The applicant did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court.

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. *Declares* 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, EUR 14,000 (fourteen thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of payment, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 12 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President