CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF İLETMİŞ v. TURKEY

(Application no. 29871/96)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

In the case of İletmiş 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 I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mrs D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 29871/96) 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 a Turkish national, Mr Nazmi İletmiş ("the applicant"), on 15 December 1995.

2. The applicant, who had been granted legal aid, was represented by Mr S. Çınar, a lawyer practising in Diyarbakır. 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 First Section of the Court (Rule 52 § 1 of the Rules of Court). On 14 December 1999 the Court decided to communicate the application to the Government.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The parties then replied in writing to each other's observations.

6. On 1 March 2005, under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1953. At the time he lodged his application he was living in İzmir.

8. In 1975 he went to Germany, where he enrolled at the University of Bremen.

9. In 1979 he married a Turkish national. The applicant and his wife both held residence permits and were employed as social workers. They had two children, one born in 1981 and one in 1986, who attended school in Germany.

10. In a secret message dated 19 March 1984, the Turkish Ministry of Foreign Affairs informed the Turkish Ministry of Defence that the applicant was a member of the Union of Turkish Students and a sympathiser of the Kurdistan Committee, two organisations active in Bremen. According to the message the applicant had links with HEVRA (the European Organisation of Kurds of Revolutionary Turkey), was one of the leaders of KOMKAR (the Federation of Workers' Associations of Federal Germany) and had taken part in a demonstration organised by left-wing separatists in protest against the military intervention of 12 September 1980.

11. On 28 March 1984 the Ministry of Defence brought the above-mentioned facts to the attention of the Commander of the 8th district of the state of emergency region of Elazığ province. In a secret message on 3 April 1984 the latter reported the applicant to the military prosecutor's office attached to the headquarters of the Commander of the state of emergency region, which opened a preliminary investigation in respect of activities detrimental to the national interest committed abroad, an offence under Article 140 of the Criminal Code.

12. On 13 March 1986 the National Assembly lifted the state of emergency in Elazığ province. On 16 April that year the military deputy public prosecutor in charge of the applicant's case accordingly issued a decision of non-jurisdiction and referred the case to the Elazığ public prosecutor, who took over the investigation.

13. On 12 April 1991 a number of Articles of the Criminal Code, including Article 140, were repealed by Law no. 3713.

14. On 21 February 1992 the applicant was arrested in Turkey while visiting his family. He was held in police custody for seven days and questioned by the police in İzmir and Istanbul. His passport was confiscated.

15. On 27 February 1992 the prosecutor at the Istanbul National Security Court, before whom he had been brought, released him but did not return his passport to him.

16. Following the applicant's arrest his family left Germany to join him in Turkey.

17. On 14 April 1992 the Elazığ public prosecutor charged the applicant with separatist activities to the detriment of the State and requested the application of Articles 125 and 168 § 1 of the Criminal Code, which made offences respectively of treason and constitution of an armed gang. The prosecutor explained that according to the press the organisations of which the applicant was a member also engaged in armed actions. The accusations concerned the period from 1977 to 1983.

18. On 16 April 1992 the Elazığ Assize Court ("the Assize Court") instructed the Ministry of Justice to invite the German authorities to provide information about the activities and institutional nature of the Union of Turkish Students, the Kurdistan Committee and the HEVRA and KOMKAR organisations.

19. On 2 June 1992, noting that it had not received the information requested, the Assize Court set 14 July 1992 as the date of the hearing. On that date, however, it simply had the case records read out in order to familiarise a substitute judge with the case file. It adjourned the hearing until 24 September 1992 as no reply had yet been received from the Ministry of Justice. The hearing of 24 September and the nineteen subsequent hearings held before the Assize Court – on 12 November and 17 December 1992, 28 January, 11 March, 6 May, 17 June, 9 September, 21 October and 9 December 1993, 3 February, 1 March, 3 May, 30 June, 6 October, 4 November and 27 December 1994, and 21 March, 23 June and 6 October 1995 – all took place without any decisions being taken on the merits, pending a reply from the German authorities, and served only to inform the substitute judges of the content of the case file.

20. During his trial the applicant applied several times to the provincial governor's office for his passport to be returned, to no avail. He was told that his passport could be handed over to him only if he produced a certificate from the court in which he was standing trial stating that there was no reason why he should not be permitted to leave Turkey.

21. At the hearing on 3 February 1994 the applicant's lawyer asked for the restraining order preventing his client from leaving Turkey to be lifted. In the alternative, he requested a document attesting that no such restraining order existed.

22. According to the record of the hearing on 1 March 1994, the Assize Court replied that it had not issued any restraining order and that it could only supply him with a certificate to the effect that the proceedings against him were continuing.

23. On 18 January 1995 the applicant's lawyer submitted supplementary written pleadings in which, relying on Article 6 § 1 of the Convention, he complained of the excessive length of the proceedings and asked for judgment to be pronounced without waiting any longer for a reply from the German authorities. He contended that, although his client was free, he

could neither return to Germany nor have any reasonable prospects in Turkey because of the continuing trial and the restrictions it entailed.

24. On 17 October 1995 the applicant obtained a certificate from the provincial governor's office, signed by a police officer, stating that the refusal to return the passport was based on a measure which had been ordered by the Ankara Security Directorate and was still valid. The date of and reasons for the measure concerned were not stated in the certificate.

25. The Assize Court sat on 25 January 1995, 18 April, 20 June, 19 September and 19 December 1996, 21 February, 29 April, 3 July, 18 September and 17 November 1997, and 2 February and 20 April 1998, without making any progress with the proceedings.

26. At its 5 June 1998 session the Assize Court discovered a letter in the file in which the Ministry of Justice asserted that the information requested of it had been sent in January 1998. Being convinced that this was not so, the Assize Court scheduled another hearing on 14 September 1998, to allow for the transmission of the information concerned. On that date – after the records had been read out – the Assize Court noted that the Ministry had indeed sent a document dated 22 January 1998, stating that the only information the registers of the Turkish Consulate in Hanover contained was an indication that the applicant's sister, one Gülşen İletmiş, was one of the leaders of KOMKAR in Bremen.

27. On 14 September 1998 the Assize Court issued a warrant for the applicant's arrest.

28. On 22 March 1999 the applicant's lawyer sought the annulment of the warrant for lack of evidence.

29. On 23 March 1999 the Assize Court annulled the arrest warrant.

30. On 1 July 1999 the Assize Court acquitted the applicant for lack of any evidence against him.

31. Subsequently, on an unspecified date, the applicant was issued with a passport and returned to Germany with his family. He is now living in Turkey with his wife. Their children, who are now of age, live in Germany.

II. RELEVANT DOMESTIC LAW

32. The following were the provisions of the Criminal Code and the Passports Act as they applied at the material time:

1. The Criminal Code

Article 140

"It shall be an offence, punishable by not less than five years' imprisonment, for any citizen to disseminate and publish exaggeratedly untruthful information in a foreign country for a subversive purpose, or to engage in any activity contrary to the national

interest in such a way that the activity in question diminishes the regard or respect in which Turkey is held abroad."

Article 125

"It shall be an offence punishable by death to commit any act aimed at subjecting the State or part of the State to domination by a foreign State, diminishing the State's independence, breaking its unity or removing part of the national territory from the State's control."

Article 168

"It shall be an offence punishable by at least fifteen years' imprisonment to form an armed gang or organisation or to assume control or special responsibility within such a gang or organisation with the intention of committing any of the offences referred to in Articles 125 ...

It shall be an offence punishable by five to fifteen years' imprisonment to belong to such an organisation."

2. The Passports Act (Law no. 5682)

Section 22

"... no passport or other travel document shall be issued to any person prohibited from leaving the national territory by virtue of a judicial decision, or to any person the Ministry of the Interior considers a potential threat to general security if allowed to leave the country ..."

THE LAW

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

33. The applicant alleged that the length of the criminal proceedings had infringed the "reasonable time" principle embodied in Article 6 § 1 of the Convention, which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

34. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes, moreover, that the complaint is not inadmissible on any other grounds.

B. Merits

35. The period to be taken into consideration began on 3 April 1984, the date on which the preliminary investigation was opened by the military prosecutor's office (see paragraph 11 above) and ended on 1 July 1999, when the Assize Court acquitted the applicant (see paragraph 30 above). It therefore lasted approximately fifteen years, at only one level of jurisdiction.

36. The Court has dealt on many occasions with cases raising issues similar to those raised in this case, and found that there had been a violation of Article 6 § 1 of the Convention (see, for example, *Frydlender v. France* [GC], no. 30979/96, ECHR 2000-VII).

37. Having examined all the evidence brought to its attention, the Court considers that the Government have adduced no convincing facts or arguments that might lead to a different conclusion in this 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 violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant complained that the measure which had allegedly prevented him from leaving the country amounted to a violation of his right to respect for his private and family life under Article 8 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... public safety or ... for the prevention of disorder or crime ..."

A. Admissibility

39. The Government argued that the applicant's complaint was manifestly ill-founded, alleging that no order prohibiting him from leaving the country had been issued by the judicial authorities.

40. The applicant submitted that the subject of his complaint was not a judicial measure but an administrative measure, the existence of which had been established.

41. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes, moreover, that the complaint is not inadmissible on any other grounds.

B. Merits

42. The Court considers that the confiscation by the administrative authorities of the applicant's passport and their failure to return it to him for a number of years amount to an interference with the applicant's exercise of his right to respect for his private life. Sufficiently close personal ties existed for there to have been a risk that they would be seriously affected by the confiscation measure (see, *mutatis mutandis*, *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A no. 193, p. 18, § 36; *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 91, § 52; and *Amrollahi v. Denmark*, no. 56811/00, § 33, 11 July 2002). It observes in this connection that the applicant had been living in Germany for seventeen years, had gone there at the age of 22 to study at university and had got married there, that his two children had been born there and that the whole family lived in Germany, where both spouses were employed as social workers.

43. Such interference breaches Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and appears "necessary in a democratic society" to achieve those aims.

44. First of all, on the question of "lawfulness" within the meaning of Article 8 § 2 of the Convention, the Court recognises that the interference was "in accordance with the law" (specifically, section 22 of the Passports Act – see paragraph 32 above).

45. The Court also accepts that the withdrawal of the passport in 1992, at the time of the applicant's arrest, pursued at least one of the "legitimate aims" set out in Article 8, namely preserving "national security" and/or "the prevention of ... crime".

46. As to whether the measure was "necessary in a democratic society", that is, whether it corresponded to a "pressing social need" and was proportionate to the legitimate aim pursued, the Court notes at the outset that the Convention finds no fault with preventive measures of this type (see, *mutatis mutandis*, *M. v. Italy*, no. 12386/86, Commission decision of 15 April 1991, Decisions and Reports 70, p. 59).

47. The Court considers, however, that the longer the proceedings went on without any progress being made and without any evidence against the applicant being produced, the less compelling the legitimate aim became.

Likewise, with the passing of time the applicant's right to freedom of movement, considered here as an aspect of his right to respect for his private life, increasingly outweighed the imperatives of national security and the prevention of crime.

48. On this point the Court observes that, in the fifteen years of proceedings during which the applicant was prohibited from leaving the country, no evidence of any threat to national security or any risk of crime was adduced. That no such threat existed is confirmed by the fact that the Assize Court at no time ordered the applicant not to leave the country. Furthermore, the administrative authorities themselves never gave reasons for the impugned prohibition. The Court fails to see, therefore, how the simple fact that the applicant had been suspected in 1984 of belonging to an illegal organisation, or that the resulting proceedings were still pending, could possibly justify such harsh measures against him over a period of fifteen years in the absence of any concrete evidence that there was a real danger of him committing a crime. The Court also stresses that the applicant had no criminal record and was eventually acquitted of the charges against him, no material proof of his purported membership of the organisations concerned having been found in the course of the preliminary investigations or the trial.

49. Finally, the Court must consider the applicant's personal and family situation when he lived in Germany (see paragraph 42 above) and take into account the extent of the uncertainty and upheaval in his life caused by the indefinite maintenance of the impugned measure.

50. At a time when freedom of movement, particularly across borders, is considered essential to the full development of a person's private life, especially when, like the applicant, the person has family, professional and economic ties in several countries, for a State to deprive a person under its jurisdiction of that freedom for no reason is a serious breach of its obligations.

The fact that “freedom of movement” is guaranteed as such under Article 2 of Protocol no. 4, which Turkey has signed but not ratified, is irrelevant given that one and the same fact may fall foul of more than one provision of the Convention and its Protocols (see *Poiss v. Austria*, judgment of 23 April 1987, Series A no. 117, p. 108, § 66).

The Court comes to the conclusion that, after a time (see paragraph 47 above), continuing to prohibit the applicant from leaving the country no longer answered a “pressing social need” and was therefore disproportionate in relation to the aims pursued, legitimate though they were under Article 8 of the Convention.

Accordingly, there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 153,000 euros (EUR) for pecuniary damage and EUR 50,000 for non-pecuniary damage.

53. The Government disputed these claims.

54. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 25,000 in respect of all damage.

B. Costs and expenses

55. The applicant also sought EUR 6,670 for costs and expenses incurred in the domestic proceedings and before the Court.

56. The Government disputed these claims.

57. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the instant case, having regard to the evidence before it, the aforementioned criteria and the sums already paid in legal aid, the Court considers it reasonable to award the applicant the sum of EUR 1,350 for all costs and expenses.

C. Default interest

58. 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* that there has been a violation of Article 8 of the Convention;

4. *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 25,000 (twenty-five thousand euros) in respect of damage and EUR 1,350 (one thousand three hundred and fifty euros) for costs and expenses, to be converted into new Turkish liras at the rate applicable at the date of settlement, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President