



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

THIRD SECTION

CASE OF ALİ RIZA DOĞAN v. TURKEY

(Application no. 50165/99)

JUDGMENT

STRASBOURG

22 December 2005

FINAL

22/03/2006

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 Ali Rıza Doğan v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr L. CAFLISCH,

Mr R. TÜRMEŒ,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Ms I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 50165/99) 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, Mr Ali Rıza Doğan (“the applicant”), on 3 March 1999.

2. The applicant 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. On 26 October 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. 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

4. The applicant was born in 1967 and lives in Istanbul.

5. In May 1992 he was taken into police custody on suspicion of membership of an illegal organisation and detained on remand. He was subsequently charged with carrying out activities for the purpose of bringing about the secession of part of the national territory under Article 125 of the Criminal Code and tried before the Diyarbakır State Security Court.

6. On 8 December 1994 the applicant was released pending trial.

7. On 30 March 1995 the first-instance court acquitted the applicant of the charges brought against him.

8. On 29 February 1996 the Court of Cassation upheld the judgment of the Diyarbakır State Security Court.

9. On 25 October 1996 the applicant filed an action for compensation with the Kartal Assize Court against the Treasury, pursuant to Law no. 466. The applicant requested a compensation of 2,000,000,000 Turkish liras (TRL) for his unjustified detention on remand.

10. On 2 December 1996 the Kartal Assize Court requested the Diyarbakır State Security Court to send the documents pertaining to the criminal proceedings against the applicant. In particular, the first-instance court requested that the documents showing the date on which the judgment had become final be sent promptly in order to determine whether the applicant had filed his compensation claim within the statutory time-limit.

11. Between 2 December 1996 and 30 November 1999 the Kartal Assize Court consistently requested the Diyarbakır State Security Court to send the aforementioned documents.

12. On 10 November 1999 the Kartal Assize Court appointed an expert to calculate the pecuniary damage sustained by the applicant due to his deprivation of liberty.

13. On 24 November 1999 the expert submitted his report concerning the amount of pecuniary damage.

14. On 30 November 1999 the Kartal Assize Court awarded the applicant a certain amount of pecuniary and non-pecuniary damage to compensate the periods the applicant had spent in police custody and in detention on remand.

15. The applicant and the Ministry of Treasury appealed against the judgment of the Kartal Assize Court.

16. On 5 October 2000 the Court of Cassation held that the amount awarded to the applicant was too low and quashed the judgment of the first-instance court.

17. On 9 November 2000 the expert appointed by the first-instance court submitted a report concerning the amount of pecuniary damage the applicant sustained as a result of his deprivation of liberty.

18. On 10 November 2000 the Kartal Assize Court awarded the applicant TRL 1,538,492,740 in respect of pecuniary and non-pecuniary damage.

19. The Ministry of Treasury appealed.

20. On 5 April 2001 the Court of Cassation quashed the judgment of the first-instance court due to a procedural error.

21. On 28 June 2001 the Kartal Assize Court once again awarded the applicant TRL 1,538,492,740.

22. The Ministry of Treasury appealed.

23. On 8 November 2001 the Court of Cassation upheld the judgment of the Kartal Assize Court.

THE LAW

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

24. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

25. The Government contested that argument.

26. The period to be taken into consideration began on 25 October 1996 when the applicant filed the case for compensation before the Kartal Assize Court and ended on 8 November 2001, when the Court of Cassation upheld the judgment of the first-instance court. It thus lasted approximately five years for two levels of jurisdiction, which examined the case three times.

A. Admissibility

27. The Government requested the Court to dismiss the complaint as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 of the Convention. They submitted that the applicant did not file a complaint against the trial judge with the domestic authorities, such as the Ministry of Justice or a public prosecutor’s office.

28. The Court notes that the only remedies which Article 35 § 1 of the Convention requires to be exhausted are those that relate to the breaches alleged; the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It falls to the respondent State, if it pleads non-exhaustion, to establish that these conditions are satisfied (see, among many other authorities, *Ramazanoğlu v. Turkey* (dec.), no. 39810/98, 10 September 2002).

29. The Court considers that the Government have not established as to how a complaint lodged against the judge of the trial court would be capable of redressing the applicant’s complaint that the length of the proceedings before the Kartal Assize Court had been incompatible with the “reasonable time” requirement.

30. Accordingly, the Court rejects the Government’s objection.

B. Merits

31. The Government submitted that in order to decide on the compensation issue the Kartal Assize Court had to request the Diyarbakır State Security Court to send the documents pertaining to the criminal proceedings against the applicant. They contended that the efforts of the Assize Court had the purpose of guaranteeing a proper ruling.

32. The applicant maintained that the Kartal Assize Court held twenty-eight hearings and that during these hearings it did no more than request documents from another court and a report from an expert.

33. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among others, *Yalman and Others v. Turkey*, no. 36110/97, § 23, 3 June 2004).

34. The Court considers that the subject matter of the litigation, namely the determination of the amount of compensation to be paid to the applicant for their unjustified detention on remand, was not particularly complex. It further notes that the cases concerning compensation claims brought under Law no. 466 are examined by the competent courts by way of a written procedure.

35. As regards the conduct of the applicant, the Court observes that it does not appear that he significantly contributed to the prolongation of the proceedings.

36. As to the conduct of the authorities, the Court observes that the first instance court took more than three years to render its judgment and that this delay has not been satisfactorily explained by the Government. Their argument that there were documents which had to be requested from the Diyarbakır State Security Court in order to guarantee a proper ruling in the case is not sufficient to explain the delay in question. The Court reiterates in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II).

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

38. In the light of the criteria laid down in its case-law, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

40. In his submissions of 17 August 2005 to the Court, the applicant further contended that there had been an unjustified interference with his right to peaceful enjoyment of his possessions on account of the excessive length of the proceedings. He invoked Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

41. The Government did not make any submission regarding the applicant’s complaint under this head.

42. The Court observes that, in the instant case, the final domestic decision was given on 8 November 2001 whereas the complaint under Article 1 of Protocol No. 1 was introduced to the Court on 17 August 2005.

43. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 14,002 United States dollars (USD) in respect of pecuniary damage. He alleged that if the compensation rewarded by the first-instance court was paid at an earlier stage than 2001 he would not have a loss due to inflation.

46. The Government contested the claim. They submitted that the amount claimed by the applicant were excessive.

47. The Court considers that there is no causal link between the pecuniary damage claimed before the Court and the violation found. Furthermore, it is not for the Court to speculate on what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 (see *Werner v. Austria*, judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2514, § 72; and *Yalman and others*, cited above, § 32). Consequently, no award is made under this head.

48. The applicant further claimed a total of 5,000 euros (EUR) for non-pecuniary damage.

49. The Government submitted that the amount claimed by the applicant were excessive.

50. The Court accepts that the applicants suffered non-pecuniary damage such as distress and frustration on account of the duration of the proceedings, which cannot be sufficiently compensated by finding of a violation. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 2,400 under this head.

B. Costs and expenses

51. The applicant also claimed EUR 4,974 for the costs and expenses incurred before the domestic courts and before the Court.

52. The Government contested the claim.

53. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

54. 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 in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 2,400 (two thousand and four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any taxes that may be chargeable on the above amounts;
 - (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 22 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President