



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

THIRD SECTION

CASE OF TENDİK AND OTHERS v. TURKEY

(Application no. 23188/02)

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 Tendik and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr R. TÜRMEŖ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. MYJER,
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. 23188/02) 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 Turkish nationals, Mr Halit Tendik, Haydar Tikiz, Aran Serhat, and Salih Tikiz, on 29 May 2002.

2. The applicants were represented by Mr M. Erbil and Mr M. Ayhan, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged that the period of their detention on remand exceeded a reasonable time requirement, that the criminal proceedings brought against them were not concluded within a reasonable time, and that they did not have an effective remedy at their disposal under domestic law in that respect.

4. On 2 June 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.

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

6. The applicants and the Government each filed observations on the admissibility and the merits (Rule 59 § 1).

THE FACTS

7. The applicants were born in 1972, 1969, 1977 and 1947 respectively. They are imprisoned in Erzurum Prison in Turkey.

8. The first applicant was detained on 7 January 1995, the second applicant on 16 March 1994, the third applicant on 11 July 1994, and the fourth applicant on 3 February 1994 on suspicion of membership of the PKK and carrying out separatist activities against the Republic of Turkey.

9. The applicants were brought before the investigating judges on 11 February, 24 March, 20 July 1994 and 20 January 1995. Subsequently, the investigating judges ordered the applicants' detention on remand.

10. On 12, 13 and 15 September 1994 the public prosecutor at the Erzincan State Security Court filed indictments with the same court against twenty-two persons including the applicants accusing them, *inter alia*, of involvement in separatist activities and being members of, and aiding and abetting, the PKK. The accusation against the first applicant included the forming of the Evci village committee of the PKK, setting three primary schools in different villages on fire, and recruiting people for the mountain team of the organisation.

11. On 2 June 1997, following the promulgation of Law no. 4210 which abolished the Erzincan State Security Court, the case-file was transferred to the Erzurum State Security Court.

12. Throughout the criminal proceedings, either on its own motion or at the applicants' request, at the end of every hearing, the State Security Court examined and ordered the applicants' continued detention. The State Security Court relied on the nature of the offences charged and the state of the evidence for the applicants' further detention.

13. On 8 January 1999 the Erzurum State Security Court sentenced the first and second applicants to the death penalty under Article 125 of the Criminal Code for their involvement in separatist activities and then commuted this to a life sentence. It further sentenced the third applicant to death for the same offence and commuted this to twenty years' imprisonment, and the fourth applicant to fifteen years' imprisonment for being a member of the PKK.

14. On 23 December 1999 the Court of Cassation quashed the lower court's decision on the grounds that the State Security Court had failed to respect the right of defence during the proceedings concerning some of the co-accused and the absence of the necessary signatures and stamps in the copies of the family registry documents of some of the accused, including the fourth applicant. The case-file was remitted to the State Security Court.

15. On 22 May 2001 the Erzurum State Security Court sentenced the first and second applicants to the death penalty under Article 125 of the Criminal Code for their involvement in separatist activities and then commuted this to a life sentence. It further sentenced the third applicant to

death for the same offence and commuted this to sixteen years and eight months' imprisonment. The fourth applicant was sentenced to twelve years and six months' imprisonment for being a member of the PKK.

16. The judgment was, *ex officio*, subject to appeal.

17. On 29 November 2001 the Court of Cassation upheld the latter decision of the State Security Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

18. The applicants complained that their detention on remand exceeded the "reasonable time" requirement of Article 5 § 3 of the Convention, which reads insofar as relevant as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

19. The Court reiterates that under its case-law the end of the period referred to in Article 5 § 3 is the day on which the charge is determined, even if only by a court of first instance (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 23, § 9).

The Court notes that in the instant case the State Security Court delivered its final judgment of the case on 22 May 2001. From that point on, and until the Court of Cassation decision of 29 November 2001, the applicants were detained "after conviction by a competent court", which fell within the scope of Article 5 § 1 (a) of the Convention. However, the application was lodged with the Court on 29 May 2002 which is more than six months after the judgment of 22 May 2001. Consequently, this part of the application is introduced out of time and must be rejected for non-compliance with the six-month time-limit in accordance with Article 35 §§ 1 and 4 of the Convention.

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

20. The applicants complained that the criminal proceedings against them were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention, which reads as relevant as follows:

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

A. Admissibility

21. The Government alleged that the applicants have failed to comply with the six-month rule of Article 35 of the Convention. They argued that in the present case the final domestic decision was taken on 29 November 2001 by the Court of Cassation; however the application was introduced on 26 September 2002 that is more than six months after that date.

22. The Court recalls that for the purposes of Article 35 § 1 of the Convention, the running of the six-month time-limit is interrupted by the first letter from the applicants, setting out summarily the object of the application, provided that the letter is not followed by a long delay before the application is completed. In this connection, the Court notes that the applicants' first letter, indicating an intention to lodge an application and giving a summary of the nature of the complaints, was sent on 29 May 2002, i.e. within six months following the final domestic decision of 29 November 2001. This was followed by a completed application on 26 September 2002, which according to the established Court's case-law cannot be regarded a lengthy delay. The applicants therefore must be considered to have complied with the six-month rule provided under Article 35 § 1 of the Convention. The Government objection must therefore be rejected.

23. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must be declared admissible. In accordance with its decision to apply Article 29 § 3 of the Convention, the Court will immediately consider the merits of this complaint.

B. Merits

24. The Government maintained that the case was complex, considering the nature of the offences attributed to the applicants and the need to organise a large-scale trial considering the number of the accused.

25. The Court observes that the periods to be taken into consideration began between February 1994 and January 1995, with the applicants' arrest, and ended on 29 November 2001 with the decision of the Court of Cassation. The proceedings therefore lasted for periods ranging from seven years to seven years and nine months.

26. 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 other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

27. The Court considers that even though the case involved a certain degree of complexity since it involved the prosecution of twenty-two accused, it cannot be said that this in itself justified the total length of the proceedings.

28. As regards the conduct of the applicants, the Court observes that it does not appear from the case-file that they contributed to the prolongation of the proceedings.

29. Concerning the conduct of the authorities, the Court notes that the instant case was examined in four levels of jurisdiction within periods ranging from seven years, to seven years and nine months. It observes that after the public prosecutor had filed indictments with the State Security Court, it took the State Security Court four years and four months to render its first judgment. The Court of Cassation quashed this judgment on points of law in that the first-instance court had delivered its judgment without having respect for the rights of defence concerning some of the co-accused of the applicants, and that the copies of the family registry documents of some of the accused, including the fourth applicant, were without the necessary stamps and signatures. Following the remission of the case-file to the State Security Court, it took the court one year and five months to render its latter judgment. The Court observes that as far as the criminal proceedings against the applicants were concerned, after the remission of the case, the only procedural requirement which the trial court should have complied with was to obtain a stamped and signed copy of the fourth applicant's family registry document. A period of one year and five months is deemed to be excessive in fulfilment of this requirement.

30. Recalling 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 *Arvelakis v. Greece*, no. 41354/98, § 26, 12 April 2001), the Court considers that the domestic court could have applied stricter measures to speed up the proceedings.

31. In light of the foregoing, the Court considers that the total length of the proceedings (in particular a period of six years and four months before the first-instance court) cannot be considered to have complied with the "reasonable time" requirement laid down in Article 6 § 1.

There has accordingly been a violation of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. The applicants further complained that there were no domestic remedies available under Turkish law for the excessive length of the criminal proceedings against them. They relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

33. The Government contended that the applicants did not complain of the length of the proceedings at any stage of the trial before the domestic court. The Court notes that this objection is closely linked to an examination of the merits of the complaint, thus it joins it to the merits.

B. Merits

34. The Court observes firstly, that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time.

35. For the purposes of Article 13, it is necessary to determine in each case whether the means available to the applicants in domestic law are “effective” in the sense that they either prevent an alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Kudla v. Poland* [GC], no. 30210/96, §§ 156-158, ECHR 2000-XI). Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigants with adequate redress for delays that have already occurred (see *Hartman v. Czech Republic*, no. 53341/99, § 81, ECHR 2003-VIII (extracts)).

36. The Court observes that the Turkish legal system does not provide any remedies to accelerate the proceedings. In the present case, the applicants did not have personal rights to compel any other authority to exercise its supervisory jurisdiction over the trial court to expedite the proceedings (see *Hartman*, cited above, § 66). In this connection, the argument put forward by the Government that the applicants did not at any stage of the trial complain of the length of the proceedings cannot be regarded as an “effective remedy” for the purposes of Article 13.

37. The Government further maintained that the applicants could have brought a compensation action against the judges who conducted the proceedings for the alleged damage they have suffered as a result of lengthy proceedings under the Code of Civil Procedure.

38. The Court notes that the Government did not specify any provision of the Code of Civil Procedure which the applicants alleged to have relied on for such an action, nor did they provide any example which proves that this remedy would satisfy the “effective” requirement under Article 13 of the Convention.

39. The Court therefore concludes that Turkish law does not provide an effective remedy whereby the applicants could have contested the length of the proceedings.

There has accordingly been a breach of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 50,000 new Turkish liras (TRL) each in respect of non-pecuniary damage.

42. The Government contested the claim.

43. The Court considers that the applicants must have suffered non-pecuniary damage, such as distress. Ruling on an equitable basis, it awards each of the applicants 2,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicants also claimed TRL 27, 550 for the costs and expenses incurred before the Court.

45. The Government contested the claim.

46. On the basis of the material in its possession and ruling on equitable basis, the Court awards the applicants EUR 500 each for the costs and expenses.

C. Default interest

47. 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 complaint concerning the length of the proceedings and the lack of an effective remedy before a national authority admissible and the remainder of the application inadmissible;
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 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (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 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