



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

FOURTH SECTION

CASE OF DAĞ v. TURKEY

(Application no. 74939/01)

JUDGMENT

STRASBOURG

8 August 2006

FINAL

08/11/2006

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 Dağ v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. TÜRMEŒ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 4 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 74939/01) 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 İsmet Dağ (“the applicant”), on 13 March 2001.

2. The applicant was represented by Mr K. Bilgiç, a lawyer practising in Izmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 10 July 2003 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 1965 and lives in Turkey.

5. On 23 September 1994 the applicant was taken into custody within the context of a police operation against the PKK (Kurdish Workers’ Party).

6. On 29 September 1994 the public prosecutor in Izmir filed a bill of indictment with the Izmir Criminal Court of First Instance (*asliye ceza mahkemesi*) charging the applicant and his co-accused, under Articles 350 and 351 of the Criminal Code, with forging and using an identification card.

7. On 26 December 1994 the applicant appeared before the court and made statements.

8. Between 7 November 1995 and 23 December 1998 the Izmir Criminal Court of First Instance postponed the hearings due to the absence of one of the applicant's co-accused, Ş.Z., whose statements had to be taken. The representative of the applicant was present before the court only on 26 January 1996.

9. On 23 December 1998, upon the request of the Izmir public prosecutor, the Izmir Criminal Court of First Instance issued a decision of non-jurisdiction, holding that the acts committed by the applicant and his co-accused constituted the offence defined in Article 342 of the Criminal Code which prohibits forgery of official documents. The case file was then sent to the Izmir Assize Court (*ağır ceza mahkemesi*).

10. On 22 March 1999 the first-instance court issued a summons requiring the applicant to give evidence.

11. At the next hearing, on 9 June 1999, the applicant appeared before the court and made statements.

12. Between 22 March 1999 and 23 February 2000 the Izmir Assize Court postponed the hearings due to the absence of the applicant's co-accused, Ş.Z. and M.A.Z., whose statements had to be taken.

13. On 28 December 1999 statements of M.A.Z. were taken by the Çankırı Assize Court and sent to the trial court.

14. On 23 February 2000, following the receipt of M.A.Z.'s statements of 28 December 1999, the Izmir Assize Court once again postponed the hearing as the address of Ş.Z. could not be determined.

15. On 2 October 2000 the court ordered the detention of Ş.Z. in his absence.

16. Until 26 February 2003 the first-instance court postponed the hearings as Ş.Z. could not be found.

17. On 26 February 2003 the Izmir Assize Court held that the criminal proceedings against the applicant and his co-accused should be discontinued on the ground that the prosecution was time-barred.

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 contended that the delays in question were not attributable to the domestic court, as it took a considerable time to determine the address of M.A.Z. and since Ş.Z. could not be heard throughout the whole proceedings. The Government further maintained that the applicant had been present only twice before the first-instance court and that his representative had attended only two hearings.

20. The period to be taken into consideration began on 23 September 1994 and ended on 26 February 2003. It thus lasted eight years and five months for one level of jurisdiction.

A. Admissibility

21. 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

22. 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).

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pietiläinen v. Finland*, no. 35999/97, § 43, 5 November 2002 and *Dereci v. Turkey*, no. 77845/01, § 44, 24 May 2005).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present 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 breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government maintained that the claim was excessive.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 6,500 under this head.

B. Costs and expenses

29. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the domestic courts and EUR 6,000 for those incurred before the Court.

30. The Government contested these claims.

31. 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 1,000 for the proceedings before the Court.

C. Default interest

32. 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 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 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage,

(ii) EUR 1,000 (one thousand euros) in respect of costs and expenses,

(iii) any tax 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 8 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President