



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

FIFTH SECTION

**CASE OF ERİN v. TURKEY**

*(Application no. 71342/01)*

JUDGMENT

STRASBOURG

10 August 2006

**FINAL**

*10/11/2006*

*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 Erin v. Turkey,**

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 71342/01) 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 Mehmet Salih Erin (“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 27 September 2005 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

**THE FACTS**

5. The applicant was born in 1962 and lives in Izmir.

**A. Background to the case**

6. On an unspecified date, police officers at the Istanbul airport arrested two persons in possession of passports containing fake visas. In their statements to the police, these two persons submitted that they had paid 3,000 German marks to the applicant and A.G. in order to have their passports stamped. Consequently, on 29 January 1996 police officers

carried out a search at the applicant's home in the presence of one of his siblings. The police officers seized four passports belonging to the applicant, his sibling and two other persons

7. On 6 March 1996 the applicant surrendered to the police. He was then placed in custody.

## **B. Proceedings before the domestic courts**

8. On 7 March 1996 the applicant was brought before a single judge at the Izmir Magistrates' Court who ordered his detention on remand.

9. On 14 March 1996 the Izmir Principle Public Prosecutor filed a bill of indictment with the Izmir Assize Court charging the applicant with the offence of forging passport, in particular arranging for false visa stamps for travelling abroad.

10. On 9 May 1996 the Izmir Assize Court heard the applicant and released him on bail.

11. On 30 December 1998, following the qualification of the offence as committed by a criminal organisation, the Izmir Assize Court issued a decision of lack of jurisdiction *ratione materiae* and sent the case-file to Izmir State Security Court.

12. On 11 February 1999 the Izmir State Security Court issued a decision of lack of jurisdiction *ratione materiae* and referred the case to the Court of Cassation for determination of the competent court.

13. On 25 March 1999 the Court of Cassation overturned the Izmir Assize Court's decision of lack of jurisdiction *ratione materiae* and held that the offence in question was within the latter's jurisdiction. The case-file was therefore sent to the Izmir Assize Court.

14. Between 22 March 2001 and 3 December 2003 the Izmir Assize Court held eight hearings. All hearings prior to the seventh one, which was held on 5 June 2003, were postponed on the ground that the address of one of the co-accused, namely A.G., could not be found. During this period, the Izmir Assize Court sent five letters to the Izmir Public Prosecutor's Office and requested the latter to find out A.G.'s address.

15. On 3 December 2003 the Izmir Assize Court terminated the criminal proceedings against the applicant holding that the prosecution was time-barred.

## THE LAW

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

16. 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...”

17. The Government contested that argument.

#### A. Admissibility

18. The Government requested the Court to declare the application inadmissible for failure to comply with the requirement of exhaustion of domestic remedies according to Article 35 § 3 of the Convention. They submitted that the applicant had failed to raise his complaint before the domestic courts.

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

20. The Court observes that the Turkish legal system does not provide any remedies to accelerate proceedings. Nor does it award any compensation for delays in the proceedings. Accordingly, the Court concludes that there was no appropriate, effective remedy which the applicant should have exercised for the purposes of Article 35 § 1 of the Convention (see *Hartman v. Czech Republic*, no. 53341/99, § 69, ECHR 2003-VIII (extracts)). It therefore rejects the Government’s objection.

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 notes that the period to be taken into consideration began on 6 March 1996, when the applicant was taken into police custody, and ended on 3 December 2003, when the Izmir Assize Court decided to terminate the criminal proceedings against the applicant since the offence in

question was time-barred. The proceedings lasted approximately seven years and nine months before one level of jurisdiction.

23. The Government maintained that the applicant had contributed to the length of the proceedings in question since he had failed to attend the hearings.

24. 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 conduct of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

25. 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 *Pélissier and Sassi*, cited above).

26. As regards the conduct of the applicant the Court considers that it does not appear from the case-file that the applicant contributed to the prolongation of the proceedings.

27. As to the conduct of the authorities, the Court observes that there was a substantial delay of the proceedings before the national courts. In this connection it notes that the jurisdiction dispute between the national courts lasted three years. It further notes that between 22 March 2001 and 3 December 2003 the first-instance court postponed all the hearings on the ground that A.G.'s address could not be found. During this period, the Izmir Assize Court sent five letters to the Izmir Public Prosecutor's Office and requested the latter to find out A.G.'s address. However, no result was achieved. Thus, it appears that the authorities failed to deal with the case diligently and caused a substantial delay. In the Court's opinion, the Government had not offered a convincing justification for the excessive length of proceedings, namely seven years and nine months, before one level of jurisdiction.

28. 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*, cited above).

29. 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.

30. There has accordingly been a breach of Article 6 § 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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**

32. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage. He further claimed a total of EUR 10,000 for non-pecuniary damage.

33. The Government contested the claim.

34. The Court considers that there is no causal link between the pecuniary damage claimed before the Court and the violation found. However, the Court considers that the applicants must have sustained non-pecuniary damage. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 6,000 under that head.

### **B. Costs and expenses**

35. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the domestic courts and the Court.

36. The Government maintained that only those expenses which were actually and necessarily incurred could be reimbursed. In this connection, they submitted that the applicant and his representative had failed to submit documents showing the costs and expenses.

37. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far 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 considers it reasonable to award the amount claimed in full.

### **C. Default interest**

38. 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 on the date of settlement:
    - (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 1,000 (one thousand 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 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President