



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

THIRD SECTION

CASE OF HİKMEDİN YILDIZ v. TURKEY

(Application no. 69124/01)

JUDGMENT

STRASBOURG

19 October 2006

FINAL

19/01/2007

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 Hikmedin Yıldız 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,

Mr C. BİRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 69124/01) 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 Hikmedin Yıldız (“the applicant”), on 23 October 2000.

2. The applicant was represented by Mr E. Talay and Mr S. Akbaş, lawyers practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 1 September 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the criminal proceedings to the Government. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1957 and lives in Diyarbakır.

5. On 12 January 1993 the applicant was arrested and taken into custody on suspicion of his membership in an illegal organisation, namely the PKK. On 29 January 1993 he was brought before a judge at the Diyarbakır State Security Court who ordered his remand in custody.

6. The public prosecutor at the Diyarbakır State Security Court, in his indictment dated 3 March 1993, accused the applicant and fifty other co-accused of membership and/or aiding and abetting the PKK. The charges

against the applicant were brought under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713.

7. On 11 March 1993 the criminal proceedings against the applicant and fifty other co-accuseds commenced before the Diyarbakır State Security Court. The first hearing was scheduled for 14 April 1993.

8. On 14 April 1993 the court heard some of the accused including the applicant, who denied the accusations against him. The court decided to request documents from various authorities with a view to completing the case-file and ordered the co-accused to be ready to submit their defence submissions at the next hearing.

9. Between 14 April 1993 and 25 April 2000 the court held hearings at regular intervals. During this time at each hearing the court heard some of the accused and requested documents from various authorities with a view to completing the case-file. In the course of the proceedings, the public prosecutor filed additional indictments against some of the accused and therefore the court sought to obtain additional defence submissions from these persons. In the hearing held on 2 April 1996 the public prosecutor submitted his observations on the merits of the case. The court decided to release the applicant pending trial. Following this date, the court adjourned the hearings partly on account of the failure of some of the co-accused, who were remanded in custody, to appear before the court. On 21 January 1997 and 26 February 1998 the court considered the possibility of disjoining the criminal proceedings if the case-file could not be completed as regards some of the accused. At its hearing held on 28 April 1998 the court warned that it would decide in the absence of the accused if they were not present at the next hearing. However, no such decisions were taken by the court.

10. On 25 April 2000 the Diyarbakır State Security Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time-limit under Articles 102 and 104 of the Criminal Code had expired.

THE LAW

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

11. The applicant complained that the length of the criminal proceedings exceeded the “reasonable time” requirement under Article 6 § 1 of the Convention, the relevant part of 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...”

A. Admissibility

12. The Government contended that the applicant had lost his “victim status” following the decision of the State Security Court to release him pending trial on 2 April 1996 because the applicant did not suffer any disadvantage or loss resulting from the length of the criminal proceedings after this date. The Government further asked the Court to dismiss the application for failure to exhaust domestic remedies, under Article 35 § 1 of the Convention. In this regard, the Government maintained that the applicant failed to raise the substance of his complaint before the domestic courts.

13. The applicant disputed these arguments.

14. The Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, a breach of the Convention (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). In the instant case, the Court opines that the release of the applicant pending trial in 1996 does not constitute recognition or a redress for the violation alleged by the applicant. Accordingly, the Government's objection under this head should be rejected.

15. The Court further reiterates that it has already examined and rejected the Government's preliminary objection as regards the failure to exhaust domestic remedies in similar cases (see *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005, and *Mete v. Turkey*, no. 39327/02, §§ 18-19, 25 October 2005). The Court finds no particular circumstances in the instance case, which would require it to depart from its findings in the above-mentioned applications. It therefore rejects the Government's objection under this head.

16. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

17. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the “reasonable time” requirement laid down by Article 6 § 1 began on 12 January 1993 when the applicant was arrested and taken into custody and ended on 25 April 2000 when the criminal proceedings against the applicant were terminated by the first-instance court. The period under consideration thus lasted seven years before one instance.

18. The Government maintained that, in the circumstances of the present case, the length of the criminal proceedings could not be considered

unreasonably long. In this respect, they referred to the number of the co-accused and the time spent gathering evidence. The Government further pointed out that the applicant and the co-accused had also contributed to the prolongation of the proceedings by failing to attend to a number of hearings.

19. The applicant maintained his allegations.

20. 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

21. The Court considers that, even though the case was a complex one owing to the large number of co-accused and the nature of the accusations against them, it cannot be said that this in itself justified the entire length of the proceedings before a single instance.

22. As regards the conduct of the applicant, the Court does not find that the applicant contributed significantly to the prolongation of the proceedings for his failure to attend a number of hearings since none of them were adjourned on this ground.

23. As to the conduct of the domestic authorities, the Court observes that there was a significant period of delay which was attributable to the authorities. In this respect, the Court notes that the factual circumstances of the case against the applicant and a number of co-accused were elucidated as early as 2 April 1996 when the public prosecutor submitted his observations on the merits. Regardless of this fact, the proceedings continued for approximately four years. Admittedly, the Court notes that the proceedings were prolonged partly because of the failure of some of the accused, in particular those who were remanded in custody, to appear before the court. However, reiterating 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. Neither the complexity of the case nor the conduct of the defendants is sufficient to explain the delay in which the case was processed by the first-instance court. Therefore, the Court considers the delay must be considered to be attributable to the domestic court's handling of the proceedings.

24. Finally, the Court considers that what was at stake for the applicant in these proceedings was of considerable importance to him.

25. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 12,943 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage. As regards his pecuniary damage claim, the applicant submitted that he had lost his earnings as a result of his remand in detention.

29. The Government contested the amounts.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed EUR 2,360 for costs and expenses incurred before the Court.

32. The Government contested the amount.

33. 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 considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

34. 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 according to 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 3,500 (three thousand and 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 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President