



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

THIRD SECTION

CASE OF ORUÇ v. TURKEY

(Application no. 33620/02)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Oruç v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr R. TÜRMEK,

Mr C. BÎRSAN,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 33620/02) 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 a Turkish national, Mr Abdulvahap Oruç (“the applicant”), on 6 August 2002.

2. The applicant was represented by Ms N. Aktaş, a lawyer practising in İzmit. In the instant case, the Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged, in particular, that the length of the criminal proceedings brought against him was excessive.

4. On 1 December 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 the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1961 and lives in İzmit.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 11 June 1991 an auditor initiated an investigation into the alleged falsification of documents carried out in the applicant's pharmacy. On 4 July 1991 the auditor informed the Diyarbakir Public Prosecutor about the outcome of his investigation.

8. The Ministry of Finance and Customs filed a complaint against the applicant. Consequently, on 16 June 1993 the Public Prosecutor filed an indictment against the applicant for forgery of official documents.

9. On 21 June 1993 the Diyarbakır Assize Court scheduled the first hearing for 20 September 1993. It requested the Diyarbakır Security Directorate to find the applicant's address. It also requested the Ministry of Finance to submit all documents that are relevant to the case. The applicant was not present during most of the hearings, however he was represented by his lawyer.

10. On 10 May 1994, at the sixth hearing, the Ministry complied with the court's request.

11. Following the establishment of the applicant's address, his statement taken by way of rogatory letter was submitted to the case file during the hearing of 28 June 1994. Moreover, at the same hearing the court requested Bismil and Mersin Assize Courts to take the statements of two witnesses. These statements were submitted to the case-file at the following hearing.

12. On 28 February 1995 the court sent the case-file to an expert to comment on the allegedly forged documents. During the following seven hearings there was no reply from the expert. The trial judge has therefore rescheduled the hearing without taking any substantial or procedural decision. At the hearing of 14 May 1996 the expert report was submitted to the case file.

13. On 19 September 1996 the court referred the case-file to the Forensic Department in order to have their opinion on the matter. After eight hearings, on 27 January 1998, the Forensic Department submitted its report on the allegedly forged documents, but it failed to send back the case-file. On 23 June 1998 the case-file was sent back to the court.

14. On 9 February 1999 the court requested a graphology expert at the Forensic Department to determine whether the handwriting and the signatures found on the documents belonged to the applicant.

15. On 23 December 1999 the graphology expert submitted his report.

16. On 18 January 2000 the Diyarbakır Assize Court found the applicant guilty of the charges and sentenced him to two years and eleven months imprisonment.

17. The applicant appealed against the judgement of the Assize Court. On 24 January 2002 the Court of Cassation upheld the decision of the Assize Court. The Court of Cassation pronounced its decision in the presence of the applicant. The final decision was deposited with the Registry of the first instance court on 26 February 2002.

THE LAW

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

18. The applicant complained that the length of the criminal proceedings exceeded the “reasonable time” requirement under 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...”

A. Admissibility

19. The Government argued that the application is inadmissible as the applicant failed to comply with the six-month rule laid down in Article 35 § 1 of the Convention because he did not introduce his application within six months of the Court of Cassation's decision of 24 January 2002. They argued that as the applicant was present during the hearing held before the Court of Cassation he did not have to wait until the decision was notified to him in writing.

20. The applicant contended that the six months should start to run from the date on which he was officially notified of the decision of the Court of Cassation.

21. The Court refers to its case-law according to which the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment in cases where the applicant is entitled, pursuant to domestic law, to be served *ex officio* with a written copy of the final domestic decision, irrespective of whether that judgment was previously delivered orally (see, *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33; *Venkadajalasarma v. The Netherlands* (dec.), no.58510/00, 9.7.2002, unreported). Whereas in cases where the domestic law does not provide for service, the Court considers it appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to be informed of its content (see, among many others, *Seher Karatas v. Turkey*, no. 33179/96, § 27, 9 July 2002, and *Karatepe v. Turkey* (dec.), no. 43924/98, 3 April 2003).

22. The Court observes that, despite the wording of Article 33 of the Code of Criminal Procedure which stipulates that judgments and decisions of courts are to be served on the parties to the case, it is not the practice of the Criminal Divisions of the Court of Cassation to serve their decisions on defendants (see *Seher Karatas*, cited above, § 28). However, the accused and his or her lawyer have the possibility to request a copy of the judgment

from the moment when the judgment of the Court of Cassation is sent back to the registry of the first instance court.

23. In the present case, the written judgment which contained detailed legal reasoning was at the disposal of the applicant and his lawyer as of 26 February 2002, when it was sent to the registry of the first-instance court. The application to the Court was introduced less than six months thereafter, namely on 6 August 2002. It follows that the Government's preliminary objection must be dismissed.

24. 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

25. The Government argued that it was a complex case which concerned forgery of official documents. It had been difficult to find the addresses of all doctors who had their signatures under the documents which were allegedly forged. Moreover as these witnesses were living in different cities their statements had to be taken by way of rogatory letters. In their submissions the length of the proceedings was mostly due to the negligent acts of the applicant who changed his address without notifying the court.

26. The applicant alleged that the length of the criminal proceedings was excessive. He also claimed that the authorities could have easily found his address.

27. The Court observes that the period to be taken into consideration began on 16 June 1993, when the Diyarbakır Public Prosecutor filed a bill of indictment against the applicant and ended on 24 January 2002, when the Court of Cassation upheld the judgment of the first-instance court. The period under consideration thus lasted eight years and seven months before two instances.

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

29. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

30. As regards the conduct of the applicant, the Court observes that at the beginning of the proceedings, the authorities were unable to determine the applicant's address for almost a year. After taking his statements in the very beginning of the proceedings, the court has never requested the

applicant's presence. Moreover, he was represented by his lawyer throughout the proceedings. Thus, it does not appear that the applicant's absence has contributed significantly to the prolongation of the proceedings, as alleged by the Government.

31. As to the conduct of the domestic authorities, the Court observes that the domestic court waited for more than one year for the expert report on the allegedly forged documents to be drafted (paragraph 13). Similarly, the graphology expert at the Forensic Department took nine months to determine whether the handwriting and the signatures found on the documents belonged to the applicant (paragraphs 15 and 16). During both of these periods the court rescheduled the hearings for a later date, without taking any substantial or procedural decisions.

The Court further observes that it took the experts at the Forensic Department almost sixteen months to submit their opinion on the case-file. Additionally, the fact that these experts have failed to send the case file back to the court delayed the proceedings for five more months (paragraph 14).

32. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of considerable importance to him. It observes that a criminal case into the alleged falsification of documents carried out in the applicant's pharmacy has clearly had a negative effect on his professional life.

33. The foregoing considerations are sufficient to enable the Court to conclude that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 120,000 euros (EUR) in respect of pecuniary damage. He further claimed a total of EUR 30,000 for non-pecuniary damage.

37. The Government disputed these claims.

38. As regards the alleged pecuniary damage sustained by the applicant, the Court observes that he has not produced any document in support of his

claim. Accordingly, the Court dismisses the applicant's claims in respect of pecuniary damage.

39. With regard to the non-pecuniary damage, the Court considers that the applicant may have suffered a certain amount of distress in the circumstances of the case. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 4,500 under that head.

B. Costs and expenses

40. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and the Court.

41. 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.

42. 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 to EUR 1,000 covering costs and expenses.

C. Default interest

43. 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 4,500 (four 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 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 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President