



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

SECOND SECTION

CASE OF ERDEN v. TURKEY

(Application no. 27719/02)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Erden v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI, *judges*,

and Mrs F. ELENŞ-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 27719/02) 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 Ali Erden (“the applicant”), on 10 April 2002.

2. The applicant was represented by Ms T. Aslan, 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 12 September 2006 the Court decided to give notice of the application to the Government. 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 1950 and lives in Antalya.

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

6. On 7 October 1999 the applicant was taken into custody for his suspected involvement in terrorist activities. On the same date the Magistrates' Court of Antalya ordered his detention pending trial.

7. At a hearing held on 25 November 1999, the State Security Court of Izmir ordered the applicant's release.

8. On 29 June 2000 he was acquitted of all charges.

9. On 10 August 2000 he applied to the Antalya Assize Court, seeking compensation pursuant to Law no. 466. That Law provides, *inter alia*, for an award of damages to any person who has been unlawfully deprived of his or her liberty, or who, after being lawfully detained, was not subsequently committed for trial or was acquitted after standing trial.

10. The applicant claimed a total of 6,050,000,000 Turkish Liras¹ (TRL) in pecuniary and non-pecuniary damages, comprising lost wages as a construction worker, legal costs and fees and moral damages.

11. On 13 June 2002 the court handed down a judgment awarding the applicant an unspecified sum of money.

12. Upon separate appeals by the applicant as well as the Treasury, the Court of Cassation quashed that ruling on 12 May 2003 and remitted the file to the Antalya Assize Court for a more comprehensive examination.

13. The assize court resumed the proceedings by broadening the scope of its examination of the damage which the applicant had suffered. On 23 September 2003 the court gave a second judgment, which the Court of Cassation quashed on 18 October 2004. Once again the Court of Cassation directed the court to conduct a more thorough research into the applicant's entitlement to damages.

14. On 18 February 2005 the assize court handed down its third ruling, awarding the applicant 781 New Turkish liras.² The parties appealed separately.

15. The applicant learned through his verbal contacts with the assize court's registry that on 6 February 2006 the Court of Cassation had upheld the latter judgment with certain rectifications.

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, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

¹ Approximately EUR 10,420 at the time.

² Approximately EUR 460 at the time.

17. The Government contested that argument.

18. The period to be taken into consideration began on 10 August 2000 and ended on 6 February 2006. It thus lasted nearly five years and six months before two levels of jurisdiction, with two remittals.

A. Admissibility

19. 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

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 has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Ali Rıza Doğan v. Turkey*, no. 50165/99, §§ 31-39, 22 December 2005; *Yalman and Others v. Turkey*, no. 36110/97, § 23, 3 June 2004).

22. 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

23. 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

24. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage and EUR 5,000 for non-pecuniary damage.

25. The Government submitted that no award should be made under this head. They asserted, alternatively, that any award to be made by the Court should not lead to unjust enrichment.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,500 under that head.

B. Costs and expenses

27. The applicant also claimed EUR 4,150 for the costs and expenses incurred before the Court.

28. The Government contended that the applicant's claim was unsubstantiated.

29. According to the Court's case-law, an applicant is entitled to reimbursement of 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 finds it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

30. 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, EUR 2,500 (two thousand five

hundred euros) in respect of non-pecuniary damage and 1,500 (one thousand five hundred euros) for costs and expenses, to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;

(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 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President