



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

SECOND SECTION

CASE OF ERIŞ v. TURKEY

(Application no. 28268/02)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

08/04/2008

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 Eriş v. Turkey,

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

Françoise Tulkens, *President*,

András Baka,

Rıza Türmen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 28268/02) 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 Eriş (“the applicant”), on 15 May 2002.

2. The applicant, who had been granted legal aid, was represented by Mrs G. Tuncer, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 November 2006 the Court declared the application partly inadmissible and decided to communicate the complaints under Articles 3, 6 and 13 of the Convention 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 1932 and lives in Istanbul.

A. The applicant's arrest and his alleged ill-treatment

5. On 30 September 1999 at about 12.15 p.m. the applicant attended the funeral of a prisoner, who had been allegedly killed in an operation by the security forces at the Ulucanlar Prison in Ankara.

6. According to the incident report dated 30 September 1999, the police gave a warning and asked the group to disperse. However, the demonstrators refused to obey the warnings. They continued shouting slogans and marched towards the Karacaahmet Cemetery. The police had to intervene and arrested thirty-nine people, including the applicant.

7. On the same day, at 1.30 p.m., the applicant was examined by a doctor at Haydarpaşa Numune Hospital. In his report, the doctor noted the following:

“Sensitivity on the left lumbar region and on the lower part of the left hemithorax has been observed.”

8. At 7.30 p.m. the same day, the applicant's statement was taken in the hospital by two policemen. In this statement, the applicant explained that he was retired. He maintained that, while he was sitting in a café, he had heard that there was a funeral and decided to participate; therefore he joined the group. He was however caught between the demonstrators and the police and fell on the ground. He denied being involved in the demonstration.

9. On 30 March 2000 the applicant's lawyers filed a complaint with the Üsküdar public prosecutor's office against the police officers who had allegedly ill-treated the applicant during his arrest.

10. On 27 April 2001 the Üsküdar public prosecutor issued a decision of non-prosecution. In his decision, the public prosecutor referred to the applicant's police statement, in which he maintained that he had been injured as he had fallen during the police intervention. The public prosecutor further stated that the police intervention and the force used during the intervention was lawful and proportionate in the circumstances of the case.

11. On 4 December 2001 one of the applicant's lawyers filed an objection against the public prosecutor's decision. In the petition, it was contended that the public prosecutor had failed to conduct an adequate investigation as he had failed to order a medical examination of the applicant and had not heard the applicant or other witnesses.

12. On 8 January 2002 the Kadıköy Assize Court dismissed the applicant's objection.

B. The criminal proceedings against the applicant

13. On 1 October 1999 the Üsküdar public prosecutor filed a bill of indictment with the Üsküdar Criminal Court against thirty-nine persons,

including the applicant. The prosecutor accused the applicant and the other co-accused under Article 32 of Law No. 2911 of taking part in an illegal demonstration.

14. In the hearing held on 20 December 1999, the applicant stated before the Üsküdar Criminal Court that he had heard that a press declaration would be made outside the *Cemevi*¹ concerning a prisoner who had been killed in Ankara. He therefore took a bus to go to Üsküdar Cemevi and, as he stepped down from the bus, he was arrested by the police. The applicant also stated that he had been beaten during his arrest and denied his police statement.

15. On 16 April 2001 the Üsküdar Criminal Court convicted the applicant as charged and sentenced him to one year and six months' imprisonment and a fine.

16. On 27 March 2006 the Court of Cassation quashed the judgment of the Üsküdar Criminal Code, following the adoption of the New Criminal Code on 1 June 2005.

17. On 25 May 2006 the Üsküdar Criminal Court decided to terminate the criminal proceedings against the applicant on the ground that the five year statutory time-limit under Article 102 of the Criminal Code had expired.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

18. The applicant complained under Articles 3 and 13 of the Convention that he was subjected to ill-treatment during his arrest and that the authorities failed to conduct an effective investigation into his allegations of ill-treatment.

19. The Government denied the allegations. They also asked the Court to dismiss this complaint for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They argued that the applicant could have sought reparation for the harm he allegedly suffered by instituting an action in the administrative courts.

20. The applicant disputed the Government's arguments.

21. As regards the Government's preliminary objection concerning non-exhaustion of domestic remedies, the Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Karayiğit v. Turkey* (dec.), no. 63181/00, 5 October

¹ A meeting place for Alevis for social and religious gatherings.

2004). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned application. Consequently, it rejects the Government's preliminary objection.

22. As regards the applicant's Article 3 complaint, the Court notes that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally applied the standard of proof "beyond reasonable doubt" (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

23. In the instant case, the applicant alleged that he had been severely beaten on his head, chest, arms and legs during his arrest. In support of his allegations, he submitted a medical report dated 30 September 1999, which noted that there was sensitivity on the left lumbar region and on the lower part of the left hemithorax. Such indications are however insufficient to substantiate the severe beating described by the applicant. The Court considers that the alleged ill-treatment, as described by the applicant, would have left marks on his body, which would have been observed by the doctor. Furthermore, the Court notes that the applicant was released on 1 October 1999, one day after his arrest. Thus, he could have obtained further medical reports in support of his allegations. However, he failed to do so. It is also noted that the applicant made contradictory statements before the domestic authorities. Although in his police statement dated 30 September 1999 he stated that he had been caught between the demonstrators and the police, and had fallen on the ground, in his petition to the public prosecutor, which was submitted six months after the incident, he stated that he had been beaten by the police officers during his arrest.

24. In view of the foregoing, the Court concludes that the evidence in the case file does not demonstrate beyond reasonable doubt that any excessive force was inflicted on the applicant when he was arrested. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

25. As regards the applicant's complaint under Article 13 of the Convention, the Court reiterates that this provision cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be. The grievance must be an arguable one in terms of the Convention (see, in particular, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). In view of its conclusions above (paragraphs 23 and 24), the Court considers that the applicant has no arguable claim of a violation of his rights under Article 3, which would have required a remedy within the meaning of Article 13 (see *Künkül v. Turkey* (dec.), no. 57177/00, 30 November 2006).

Consequently, this part of the application should also be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention

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

26. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

27. The Government contested that argument.

28. The period to be taken into consideration began on 30 September 1999 with the applicant's arrest and ended on 25 May 2006 with the judgment of the Üsküdar Criminal Court. It thus lasted more than six years and seven months for three levels of jurisdiction.

A. Admissibility

29. The Court notes that this complaint 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

30. 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)

31. 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).

32. In the present case, the domestic courts delivered three decisions in six years and seven months. However, the Court cannot overlook the fact that a lengthy period of five years elapsed between the judgment of the Üsküdar Criminal Court dated 16 April 2001 and the Court of Cassation's decision dated 25 May 2006. The Government have not offered any explanation for this state of affairs. Failing such an explanation, and in the absence of any indication that the applicant was to blame, the delay must be

considered to be attributable to the domestic courts' handling of the appeal proceedings.

33. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed both pecuniary and non-pecuniary damage, leaving the assessment of the amount to the Court's discretion.

36. The Government requested the Court not to award any damages.

37. The Court does not discern any casual link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

38. However, as regards non-pecuniary damage, deciding on an equitable basis, the Court awards 900 euros (EUR) to the applicant.

B. Costs and expenses

39. The applicant did not request a particular amount for costs and expenses, leaving it to the Court's discretion.

40. The Court notes that the applicant was granted legal aid. It further recalls that according to its case-law, an applicant is entitled to the 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, the Court notes that the applicant failed to submit any supporting documents. The Court therefore does not award any sum under this head.

C. Default interest

41. 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

1. *Declares* unanimously the complaint concerning the excessive length of the criminal proceedings admissible;
2. *Declares* by a majority the remainder of the application inadmissible;
3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* unanimously
 - (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 900 (nine hundred euros) in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Françoise TULKENS
President