



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

SECOND SECTION

CASE OF ÇENGELLİ AND ERYILMAZ v. TURKEY

(Application no. 287/03)

JUDGMENT

STRASBOURG

10 June 2008

FINAL

10/09/2008

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 Çengelli and Eryılmaz v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 287/03) 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 two Turkish nationals, Mr Ferit Çengelli and Mr Süleyman Eryılmaz (“the applicants”), on 23 September 2002.

2. The applicants were represented by Mr C. Yücel and Mr M. Çelik, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 7 May 2007 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 applicants were born in 1955 and 1957 respectively and live in Istanbul.

5. On 3 and 15 March 1981 the applicants were arrested.

6. On 26 May 1981 the Ankara Martial Law Court ordered their detention on remand.

7. On 16 June 1981 the public prosecutor attached to the Adana Martial Law Court filed a bill of indictment against 343 persons, including the

applicants, and charged the latter with membership of an illegal organisation, the *Dev-Yol* (Devrimci Yol - the Revolutionary Way).

8. On 17 June 1986 the Adana Martial Law Court convicted the applicants as charged.

9. On an unspecified date the applicants appealed.

10. On 20 March 1991 the Military Court of Cassation quashed the judgment of the first-instance court and remitted the case to the Ankara Martial Law Court, since in the meantime the former court had been abolished.

11. On an unspecified date in 1991 the applicants were released pending trial.

12. Subsequent to the promulgation of Law no. 3953 on 27 December 1993, which abolished the jurisdiction of the Martial Law Courts, the Ankara Assize Court acquired jurisdiction in the applicants' case.

13. On 18 June 2001 the Ankara Assize Court convicted Süleyman Eryılmaz under Article 146 § 1 of the Criminal Code and sentenced him to death. This sentence was subsequently commuted to life imprisonment. Regarding Ferit Çengelli, the first-instance court ordered that the criminal proceedings against him be terminated on the ground that the statutory time-limit under Articles 102 and 104 of the Criminal Code had expired.

14. The judgment of the Ankara Assize Court was automatically referred to the Court of Cassation insofar as it concerned Süleyman Eryılmaz, since the latter's sentence exceeded 15 years' imprisonment.

15. On 24 July 2002 the applicants allegedly learned about the outcome of the proceedings before the Ankara Assize Court through a friend.

16. By a letter dated 7 February 2003, the applicants' former lawyer informed the Court that the judgment of 18 June 2001 had been served on Ferit Çengelli on 3 February 2003 upon his request, and that the proceedings against Süleyman Eryılmaz were still pending before the Court of Cassation. (From the case file it appears that the State had attempted to serve the judgment on Ferit Çengelli earlier, but had mistakenly sent it to the wrong address.)

17. According to the documents submitted to the Court by the respondent Government, on 30 October 2003 the Court of Cassation quashed the Ankara Assize Court's judgment of 18 June 2001 insofar as it concerned Süleyman Eryılmaz and remitted the case to the Ankara Assize Court.

18. According to the information in the case file, the case against Süleyman Eryılmaz is still pending before the Ankara Assize Court.

THE LAW

I. ADMISSIBILITY

19. The Government argued firstly that the application was outside the Court's competence *ratione temporis* as the applicants' complaints mainly related to proceedings which had been conducted prior to the recognition by Turkey of the right of individual petition on 28 January 1987.

20. The Government further alleged that Ferit Çengelli had failed to comply with the six-month rule set out in Article 35 § 1 of the Convention. They maintained in this respect that the applicant should have lodged his complaints with the Court within six months of the date on which the decision of the Ankara Assize Court became final, and that it had been incumbent on the applicant to follow the proceedings with due diligence in order to keep himself informed of the date on which this decision was rendered.

21. The applicants disputed the Government's arguments. On the question of the six-month rule, Ferit Çengelli argued that, according to the relevant Turkish law, the decision of the Ankara Assize Court had not become final until 3 February 2003, the date when he had obtained the reasoned decision from the court's registry, as the State had failed in its duty to ensure the due service of this decision on him.

22. The Court reiterates that it has already examined and rejected, in previous cases, similar objections of the Government as regards the alleged incompatibility *ratione temporis* (see *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX; *Ezel Tosun v. Turkey*, no. 33379/02, § 16, 10 January 2006). It finds no particular circumstances in the instant case which would require it to depart from its findings in the aforementioned cases. It therefore rejects the Government's objection under this head.

23. As to whether Ferit Çengelli has complied with the six-month rule, the Court reiterates that, where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, 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 (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33).

24. The Court notes that the Government did not dispute in the instant case that Ferit Çengelli learned of the judgment of 18 June 2001 on 24 July 2002 through a friend, i.e. approximately one year after it was rendered. The documents in the case file indicate that, although the State had attempted to serve the judgment on the applicant at an earlier date, the notification had been unsuccessful as it had been incorrectly addressed (paragraph 16 above). The Government have failed to provide the Court with any

explanation or to challenge the applicant's allegations in this regard. The Court further observes that on 23 September 2002, i.e. within two months of learning about the judgment, Ferit Çengelli lodged his application with the Court. Moreover, on 3 February 2003, shortly after filing his application, the applicant obtained a copy of the reasoned judgment from the registry of the Ankara Assize Court. In the circumstances of the case and particularly taking into account the overall length of the criminal proceedings against the applicant, the Court does not find it unreasonable that he waited for the official notification of the judgment and did not inquire earlier about the developments in his case (see *Mahmut Aslan v. Turkey*, no. 74507/01, § 17, 2 October 2007). Consequently, the Court finds that this applicant has complied with Article 35 § 1 of the Convention and, therefore, rejects the Government's objection.

25. Moreover, 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 have been established. It must therefore be declared admissible.

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

26. The applicants complained that the length of the criminal proceedings brought against them had exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention, which provides 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. Period to be taken into consideration

27. The Court notes that the proceedings began on 3 and 15 March 1981, the respective dates of the applicants' arrest. In respect of Ferit Çengelli, they ended on 18 June 2001 and thus lasted over twenty years and three months in total before two levels of jurisdiction, which examined the case three times. According to the information in the case file, the proceedings against Süleyman Eryılmaz are apparently still pending before the Ankara Assize Court on the date of the adoption of the present judgment, more than twenty seven years later.

28. The Court's jurisdiction *ratione temporis* permits it only to consider the period which has elapsed since 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition. The period to be taken into consideration in respect of Ferit Çengelli is thus over fourteen years and four months before two levels of jurisdiction. As regards Süleyman Eryılmaz, the period to be taken into consideration is over twenty one years and four months before two levels of jurisdiction which examined

the case twice. The Court must nevertheless take account of the state of the proceedings at the time of the deposit of the aforementioned declaration (see *Şahiner*, cited above, § 22, and *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 25, 20 February 2001). On that critical date the proceedings had already lasted over five years and ten months.

B. Reasonableness of the length of the proceedings

29. The Government maintained that, in the circumstances of the present case, the length of the criminal proceedings could not be considered unreasonable. In this respect, they referred to the complexity of the case and the number of defendants.

30. The applicants maintained their allegations.

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

32. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, in particular *Ege v. Turkey*, no. 47117/99, § 25, 29 March 2005; *Gümüştan v. Turkey*, no. 47116/99, §§ 24- 26, 30 November 2004).

33. 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 finds that 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.

III. 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 applicants each claimed 40,000 United States dollars (USD) (approximately 26,942 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

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

38. The Court observes that the applicants have not produced any document in support of their claims for pecuniary damage. It accordingly dismisses this claim.

39. However, the Court accepts that the applicants must have suffered considerable non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Having regard to comparable cases, the Court awards Ferit Çengelli EUR 10,800 and Süleyman Eryılmaz EUR 19,200 under this head.

B. Costs and expenses

40. The applicants each claimed USD 6,000 (EUR 4,041 approximately) for the costs and expenses incurred before the domestic courts and USD 9,200 (EUR 6,197 approximately) for those incurred before the Court.

41. The Government contested these claims.

42. According to the Court's 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, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses as the applicants have not produced any documents in support of their claims.

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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of settlement, plus any tax that may be payable:

(i) EUR 10,800 (ten thousand eight hundred euros) to Ferit Çengelli;

(ii) EUR 19,200 (nineteen thousand two hundred euros) to Süleyman Eryılmaz;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President