



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

SECOND SECTION

CASE OF AĞRAKÇE v. TURKEY

(Application no. 29059/02)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Ağrakçe v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 29059/02) 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 Abdülkerim Ağrakçe (“the applicant”), on 10 May 2002.

2. The applicant was represented by Mr Ö. Öneren, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 5 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and lives in Diyarbakır.

5. On 16 September 1980 the applicant was arrested and taken into custody for his suspected involvement in terrorist activities. Subsequently, he was remanded in custody until 6 April 1984, when, in the course of the criminal proceedings brought against him, he was released. On 15 May 1990 he was acquitted of all charges. The applicant submits that since this

decision was not duly notified to him, he learned of his acquittal only in 1996.

6. On 24 May 1996 the applicant applied to the Diyarbakır 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. The applicant claimed 20,000,000,000 Turkish liras (TRL) (approximately 256,706 US Dollars) for non-pecuniary damage.

7. On 27 February 1998 the first-instance court awarded a certain amount of compensation. The Court of Cassation quashed that ruling on 30 December 1998 and remitted the file to the Diyarbakır Assize Court for a more comprehensive examination.

8. On 16 June 1999 the assize court dismissed the case on the ground that the applicant had failed to respect the statutory time-limit. This judgment was also quashed by the Court of Cassation on 2 May 2000.

9. On 4 October 2000 the first-instance court handed down its third ruling where it awarded a certain amount of compensation. On 27 March 2001 the Court of Cassation quashed this judgment on the ground that the amount awarded was too low.

10. On 6 September 2001 the assize court awarded the applicant TRL 3,000,000,000 (approximately EUR 2,400) in respect of non-pecuniary damage.

11. On 5 March 2002 the Court of Cassation upheld the judgment of the first-instance court.

12. In the course of the proceedings the assize court held investigatory sittings on a regular basis. Only on four occasions did it decide to notify the applicant's lawyer of the date of its next session (30 April 1997, 10 February 1999, 1 June 2000 and 6 June 2001). However, no session was postponed on account of the applicant's lawyer's failure to attend.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice in force at the material time are outlined in the *Göç v. Turkey judgment* ([GC], no. 36590/97, §§ 27-32, ECHR 2002-V).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

14. The applicant complained that the length of the compensation 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 ...”

A. Admissibility

15. The Government asked the Court to dismiss the complaint as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 of the Convention. They also maintained that the applicant did not raise the substance of his complaint before the domestic courts.

16. The applicant rejected the Government’s arguments.

17. The Court observes that in previous cases it has already examined and rejected similar objections of the Government as regards the alleged failure to exhaust domestic remedies (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned case. It therefore rejects the Government’s objection under this head.

18. 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

19. The period to be taken into consideration began on 24 May 1996 and ended on 5 March 2002. It thus lasted nearly five years and nine months before two levels of jurisdiction, with four remittals.

20. The Government maintained that, in the circumstances of the present case, the length of the administrative proceedings could not be considered unreasonably long. In particular, they alleged that the applicant contributed to the prolongation of the proceedings by not duly securing the required documents and by not attending the hearings held before the Assize Court.

21. The applicant refuted the Government’s arguments, made lengthy submissions about the procedure under Law no. 466 and maintained his

allegations under this head. He further submitted copies of cases where the compensation proceedings, pursuant to Law no. 466, had lasted less than a year.

22. 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).

23. 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, for example, *Ali Rıza Doğan v. Turkey*, no. 50165/99, §§ 31-39, 22 December 2005, and *Erden v. Turkey*, no. 27719/02, §§ 20-22, 20 November 2007).

24. 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 in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. In his application form, the applicant first complained that he had been deprived of his liberty for three years and 7 months. Secondly, he claimed that he had not been notified of his acquittal for a long time, in breach of the right to a fair judgment. Finally, the applicant criticised the amount of compensation awarded to him and questioned the effectiveness of the proceedings under Law no. 466. The applicant invoked Articles 5 § 1, 6, 13 and 41 of the Convention.

27. In later submissions the applicant made allusion to the length of the criminal proceedings and the lack of an oral hearing before the assize court.

28. However, in the light of all the material in its possession, the Court finds that the applicant’s above submissions do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

29. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed, in total, EUR 29,490 in respect of pecuniary damage. This sum included loss of earnings and the travelling expenses of his family who visited him in prison. The applicant further claimed EUR 40,000 in respect of non-pecuniary damage.

32. The Government contested the amount.

33. 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 as a result of the prolongation of the compensation proceedings. Ruling on an equitable basis, it awards him EUR 2,500 under that head.

B. Costs and expenses

34. The applicant also claimed EUR 11,600 for the costs and expenses incurred before the domestic courts and before the Court. The applicant submitted documentation regarding attorney fees and translation costs.

35. The Government contested the amount.

36. 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 in the domestic proceedings but considers it reasonable to award the sum of EUR 1,350 for the proceedings before the Court.

C. Default interest

37. 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 complaint concerning the length of the compensation proceedings admissible and the remainder of the application inadmissible;
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 the national currency of the respondent State at the date of settlement:
 - (i) EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage;
 - (ii) EUR 1,350 (one thousand three hundred and fifty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to the applicant 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 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President