



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ENGİN v. TURKEY

(Application no. 6194/04)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Engin v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

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

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 6194/04) 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 Ezgin Engin (“the applicant”), on 5 January 2004. The applicant was represented by Mr M. A. Kırđök and Mrs M. Kırđök, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

2. On 10 September 2008 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

THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in 1975 and is currently detained in the Kocaeli F Type Prison pending the criminal proceedings against him.

4. On 7 May 1997 the applicant was arrested and taken into custody on suspicion of being involved in the activities of an illegal organisation known as the DHKP-C (*the Revolutionary People's Liberation Party*).

5. On 10 May 1997 he was brought before a single judge at the Istanbul State Security Court who ordered his pre-trial detention.

6. On 20 May 1997 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and another person, charging them with attempting to undermine the constitutional order under Article 146 § 1 of the former Criminal Code.

7. On 27 September 2001 the Istanbul State Security Court convicted the applicant as charged and sentenced him to death.

8. On 14 May 2002 the Court of Cassation quashed the judgment of the first-instance court. The case was remitted to the Istanbul State Security Court for further examination.

9. On 25 December 2003 the Istanbul State Security Court convicted the applicant for a second time on the same charge and sentenced him to life imprisonment.

10. On 5 July 2004 the Court of Cassation once again quashed the judgment of the Istanbul State Security Court.

11. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. The case against the applicant was subsequently resumed before the Istanbul Assize Court.

12. According to the information in the case file, the case is still pending before the Istanbul Assize Court.

13. Throughout the proceedings, the first-instance courts examined the applicant's continued detention at the end of every hearing, either on their own motion or upon the applicant's request. Each time the courts ordered his continued detention having regard to the state of evidence and the content of the file.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

14. The applicant complained under Article 5 § 3 of the Convention that the length of his detention during the criminal proceedings against him had been excessive.

15. The Government contested that argument and asked the Court to dismiss the application for failure to exhaust domestic remedies under Article 35 § 1 of the Convention. The Government maintained in this regard that the applicant had failed to object to his continued detention.

16. The applicant stated that he had not availed himself of this remedy since he considered it to be ineffective.

17. The Court notes that it has already examined and rejected this objection raised by the Government in similar cases (see, in particular, *Koşti and Others v. Turkey*, no. 74321/01, §§ 19-24, 3 May 2007; *Mehmet Şah*

Çelik v. Turkey, no. 48545/99, §§ 22-31, 24 July 2007; and *Tamamboğa and Gül v. Turkey*, no. 1636/02, §§ 27-29, 29 November 2007). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Consequently, the Court rejects the Government's objection.

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.

19. As regards the merits of the application, the Government maintained that the length of the applicant's detention pending the judicial proceedings had been reasonable, particularly bearing in mind the risk of the applicant absconding and committing further crimes.

20. The applicant maintained his allegations.

21. The Court observes that there are three periods of detention in the present case. The first period began on 7 May 1997, when the applicant was taken into police custody, and ended on 27 September 2001, when the Istanbul State Security Court convicted the applicant. From that point on, until the Court of Cassation's decision of 14 May 2002, the applicant was detained "after conviction by a competent court", which falls within the scope of Article 5 § 1 (a) of the Convention. The first period thus lasted approximately four years and five months. The second period began on 14 May 2002, when the Court of Cassation quashed the first-instance court's judgment, and ended on 25 December 2003, when the Istanbul State Security Court convicted the applicant for a second time. The second period thus lasted approximately one year and seven months. The third period of detention began on 5 July 2004, when the Court of Cassation once again quashed the first-instance court's judgment and, according to the information in the case file, the applicant continues to be remanded in custody. The third period has thus already lasted over five years and two months and, therefore, the total length of the applicant's pre-trial detention has exceeded eleven years and two months.

22. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present application (see, for example, *Tutar v. Turkey*, no. 11798/03, §§ 16-20, 10 October 2006, and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, ECHR 2007-II (extracts)).

23. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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 applicant's detention during the judicial proceedings was excessive and contravened Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages and costs and expenses

24. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. He also claimed 5,900 Turkish liras (TRY) (approximately EUR 2,680) as legal fees and TRY 260 (approximately EUR 120) as other costs and expenses incurred before the Court, such as stationery, translation and postal fees. He submitted an invoice as proof of the payment he had made to his representative, but did not document his remaining costs and expenses.

25. The Government contested these claims.

26. The Court accepts that the applicant must have suffered non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 9,200 as non-pecuniary damage.

27. Furthermore, according to the information submitted by the parties, the criminal proceedings against the applicant are still pending. In these circumstances, the Court considers that an appropriate means for putting an end to the violation which it has found would be to conclude the criminal proceedings in issue as speedily as possible, while taking into account the requirements of the proper administration of justice, and/or to release the applicant pending the outcome of these proceedings (see, *mutatis mutandis*, *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007, and *Batmaz v. Turkey* (dec.), no. 34497/06, 1 April 2008).

28. As regards the applicant's claim for costs and expenses, the Court notes 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the Court finds it reasonable to award the applicant EUR 1,000 under this head.

B. Default interest

29. 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 5 § 3 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 Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 9,200 (nine thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President