



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ER v. TURKEY

(Application no. 21377/04)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Er v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

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

Having deliberated in private on 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 21377/04) 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 Ahmet Kenan Er (“the applicant”), on 30 April 2004. The applicant was represented by Mr H.İ. Er, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

2. On 18 November 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the criminal proceedings to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

3. The applicant was born in 1964 and lives in Istanbul.

4. On 10 October 1990 the applicant, who served as a first lieutenant in the Turkish Armed Forces at the material time, was arrested on suspicion of, *inter alia*, professional misconduct and bribery.

5. On 28 March 1991 the military prosecutor at the 33rd Infantry Division Commander's office filed an indictment charging the applicant

with twenty-four different offences, including professional misconduct, bribery and assault and battery of his inferiors.

6. On 12 May 1993 the Kırklareli Military Court acquitted the applicant in relation to certain charges and found him guilty of the remaining offences.

7. On 19 January 1994 the Military Court of Cassation upheld the judgment of the first-instance court in relation to certain offences and quashed the remainder of the judgment on grounds of, *inter alia*, insufficient investigation.

8. On 7 November 1995 the Kırklareli Military Court acquitted the applicant in relation to certain charges and found him guilty as charged for the remaining offences.

9. On 6 March 1996 the Military Court of Cassation partially upheld the first-instance court's judgment.

10. On 16 April 1996 the Kırklareli Military Court once again acquitted the applicant in relation to certain charges and found him guilty of the remaining offences.

11. On 9 May 1997 the applicant was expelled from the armed forces.

12. On 10 June 1998 the Military Court of Cassation quashed the judgment of the first-instance court on procedural grounds in relation to certain charges and for being time-barred (*zamanaşımı*) in relation to the remainder.

13. On 5 August 1999 the Çorlu Military Court found the applicant guilty as charged in relation to those offences which were not time-barred and of which he had not already been acquitted.

14. On 28 March 2001 the Military Court of Cassation quashed the judgment of the first-instance court once again in the light of a recent amendment to the relevant jurisdictional rules, and held that the case should be heard by ordinary criminal courts.

15. On 26 December 2001 the Çorlu Military Court issued a decision of lack of jurisdiction and referred the case to the Kırklareli Assize Court.

16. On 2 December 2003 the Kırklareli Assize Court decided to discontinue the proceedings against the applicant as the prosecution had become time-barred.

THE LAW

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

17. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention.

18. The Government contested that argument.

19. The period to be taken into consideration began on 10 October 1990 and ended on 2 December 2003. It thus lasted approximately thirteen years and two months for two levels of jurisdiction, including military and ordinary first-instance courts.

20. 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.

21. As regards the merits, the Government maintained that the proceedings could not be considered to have been unreasonably long, particularly in view of the complexity of the case, the number of witnesses examined and the great number of offences with which the applicant was charged.

22. 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 *Frydlender v. France* [GC], no. 30979/96, § 46, ECHR 2000-VII; *Szilvassy v. Hungary*, no. 17623/04, §§ 26-34, 1 April 2008). The Court particularly notes in the present case that the Court of Cassation quashed the judgment of the first-instance court as many as four times. It reiterates that the repeated quashing and remittal of lower court decisions for re-examination are usually ordered as a result of errors committed by the latter, which, within one set of proceedings, discloses a deficiency in the operation of the legal system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008).

23. 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 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 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages and costs and expenses

24. The applicant claimed 686,306.35 euros (EUR) in respect of pecuniary damage on account his salary cuts during the criminal proceedings and the future pension rights he had been denied after his expulsion from the armed forces. He also claimed EUR 50,000 for non-pecuniary damage and EUR 6,000 for costs and expenses incurred before the domestic courts.

25. The Government contested these claims as being unsubstantiated and excessive.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have suffered some non-pecuniary damage which the finding of a violation of the Convention in the present judgment does not suffice to remedy. Ruling on an equitable basis, in accordance with Article 41, it awards the applicant EUR 9,500 under this head.

27. As regards the applicant's claim for costs and expenses, the Court makes no award under this head as the applicant has not produced any documents in support of his requests.

B. Default interest

28. 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 remainder of 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 9,500 (nine thousand five hundred euros), plus any tax that may be chargeable, in respect of

non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President