



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

SECOND SECTION

CASE OF ZEHNI DOĞAN v. TURKEY

(Application no. 1515/04)

JUDGMENT

STRASBOURG

2 February 2010

FINAL

02/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zehni Doğan 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 Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 1515/04) 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 Zehni Doğan (“the applicant”), on 25 September 2003.

2. The applicant was represented by Ms Ö. Engin Terkeş and Mr Şenol Karaaslan, lawyers practising in Izmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 20 November 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Istanbul.

5. On 3 September 2001 an arrest warrant was issued by the Izmir Criminal Court in respect of the applicant due to his alleged involvement in fraud and the forgery of identity cards.

6. On 13 August 2001 the Izmir Public Prosecutor filed a bill of indictment charging the applicant with these offences under Article 350 (1), (2) and (3) of the former Criminal Code.

7. On 12 October 2001 the Bakırköy Magistrates' Court ordered the applicant's detention on remand in accordance with the arrest warrant.

8. On 10 December 2001 the Izmir Criminal Court issued a decision of lack of jurisdiction and referred the case to the Izmir Assize Court.

9. On 11 December 2001 the applicant was heard by the Bakırköy Magistrates' Court upon the instruction of the Izmir Criminal Court. The applicant pleaded not guilty and requested his release.

10. Between 19 December 2001 and 3 February 2003, the first-instance court postponed nine hearings since the applicant, who was detained in the Metris Prison, was not brought before it as he could not be transferred to the Buca Prison in Izmir.

11. Between 19 December 2001 and 7 July 2003, the Izmir Assize Court examined the applicant's continued detention at the end of every hearing, either of its own motion or upon the applicant's requests. On each occasion, the court ordered the applicant's continued detention, having regard to the state of the evidence and nature of the offence. On 7 July 2003 the court ordered the applicant's release.

12. On 8 November 2004 the applicant was acquitted for lack of evidence.

13. On 10 February 2005 the applicant brought an action before the Bakırköy Assize Court requesting compensation for his unjustified detention.

14. On 8 October 2007, the Bakırköy Assize Court partially granted the applicant's compensation claim.

15. On 20 November 2008 the Court of Cassation quashed the judgment of 8 October 2007.

16. According to the information in the case file, the compensation proceedings are currently pending before the first instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. A description of the domestic law and practice at the relevant time may be found in *Bağrıyanık v. Turkey* (no. 43256/04, § 19, 5 June 2007) and *Saraçoğlu and Others v. Turkey* (no. 4489/02, § 19, 29 November 2007).

THE LAW

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

18. The applicant complained under Article 5 § 3 and 6 § 1 of the Convention that the length of his pre-trial detention had been excessive.

19. The Court considers that these complaints should be examined from the standpoint of Article 5 § 3 of the Convention alone.

20. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies under Article 35 § 1 of the Convention. In this regard they maintained that the applicant failed to object the pre-trial detention order and his continued detention. The Court has rejected similar objections in many previous 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).

21. The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. It therefore finds that this complaint is admissible.

22. As regards the merits of the applicant's complaint about the length of pre-trial detention, the period to be taken into account began on 12 October 2001 and ended on 7 July 2003. It thus lasted more than one year and eight months.

23. The Court observes that the Izmir Assize Court examined the applicant's continued detention at the end of every hearing, either of its own motion or upon the applicant's requests. On each occasion, the court ordered the applicant's continued detention, having regard to the state of the evidence and nature of the offence. Even if the grounds put forward by the domestic courts for the applicant's continued detention could be deemed "relevant" and "sufficient", the Court must also be satisfied that the competent national authorities displayed "special diligence" in the conduct of the proceedings (*Muller v. France*, 17 March 1997, § 35, *Reports of Judgments and Decisions* 1997-II).

24. In this connection, the Court observes that the Izmir Assize Court postponed the hearings between 19 December 2001 and 3 February 2003, for more than a year, as the administrative authorities failed to transfer the applicant from Metris Prison to Buca Prison. The Court considers that the national authorities cannot be considered to have displayed the required diligence since the only reason for the postponements of the hearings was the prolonged failure of the authorities to bring the applicant before the court. Thus he continued to be detained without being brought before the court for a considerable time.

25. In the light of the above, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

26. The applicant complained that he had no right to compensation in domestic law for the violation of Article 5 § 3 of the Convention. He relied on Article 5 § 5 of the Convention.

27. The Government submitted that this part of the application was premature as the proceedings concerning compensation for the applicant's unjustified detention were still pending.

28. The Court considers that the Government's objection is inextricably linked to the substance of the applicant's complaint under this head. It follows that this issue should be joined to the merits of the case.

29. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is also not inadmissible on any other grounds. It must therefore be declared admissible.

30. The applicant submitted that he did not have any remedy in domestic law whereby he could seek compensation for the violation of his right under Article 5 § 3 of the Convention. He submitted that the remedy provided for by Law no. 466 was not an effective one in this respect. The Government contested this argument.

31. The Court reiterates that, under Law no. 466, in awarding the compensation the national courts base their assessment solely on the fact that the plaintiffs were ultimately acquitted. The national courts' assessment is an automatic consequence of the acquittal and does not amount to the establishment of any violation of the first four paragraphs of Article 5 (see, for example, *Sinan Tanrıkulu and Others v. Turkey*, no. 50086/99, § 50, 3 May 2007; *Medeni Kavak v. Turkey*, no. 13723/02, § 34, 3 May 2007; and *Saraçoğlu and Others*, cited above, § 52). It follows that, in the applicant's case, Law no. 466 does not provide an enforceable right to compensation for the breach of his right under Article 5 § 3 of the Convention, as required by Article 5 § 5.

32. The Court accordingly dismisses the Government's preliminary objection and concludes that there has been a violation of Article 5 § 5 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

35. The Government contested these claims.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

37. The applicant also claimed EUR 3,333 for the costs and expenses incurred before the Court. In support of his claims, the applicant submitted a legal fee agreement and a time sheet indicating twenty-seven hours' legal work carried out by his legal representative.

38. The Government contested this claim.

39. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs for the proceedings before the Court.

C. Default interest

40. 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* that there has been a violation of Article 5 § 5 of the Convention;
4. *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 2,000 (two thousand 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President