



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

SECOND SECTION

CASE OF ADIYAMAN AND ERMAN v. TURKEY

(Applications nos. 38372/06 and 24572/08)

JUDGMENT

STRASBOURG

26 Octobre 2010

FINAL

26/01/2011

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

In the case of Adıyaman and Erman 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 Stanley Naismith, *Section Registrar*,

Having deliberated in private on 5 October 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 38372/06 and 24572/08) 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 Gülpınar Adıyaman and Güllüzar Erman, who are Turkish nationals, born in 1974 and 1973 respectively. The introduction dates of the applications are indicated in the appended table.

2. The applicants were represented by Ms G. Tuncer and Mr F. N. Ertekin, lawyers practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 19 May 2009 the Court decided to give notice of the applications to the Government. It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are Turkish nationals who were arrested and subsequently detained pending judicial proceedings. They are still in detention pending trial. The information concerning the dates of the arrests, the dates of the orders for the applicants' pre-trial detention, the dates of the bills of indictment, the dates of the domestic court decisions, the total period of pre-trial detention, the total period of the criminal proceedings where relevant and the grounds for continued detention is set out in the appendix.

II. RELEVANT DOMESTIC LAW AND PRACTICE

5. A description of the relevant domestic law and practice prior to the entry into force of the new Code of Criminal Procedure (the “CCP”; Law no. 5271) on 1 June 2005 may be found in *Çobanoğlu and Budak v. Turkey* (no. 45977/99, §§ 29-31, 30 January 2007). The current practice under the new CCP is outlined in *Şayık and Others v. Turkey* (nos. 1966/07, 9965/07, 35245/07, 35250/07, 36561/07, 36591/07 and 40928/07, §§ 13-15, 8 December 2009).

THE LAW

I. JOINDER

6. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

7. The applicants complained under Article 5 § 3 of the Convention that the length of their pre-trial detention had been excessive. The applicant in application no. 24572/08 further complained under Article 5 § 4 of the Convention that there had been no effective remedy to challenge the lawfulness of the length of her pre-trial detention.

8. Relying on Articles 13 and 14 of the Convention, the applicant in application no. 38372/06 also complained about the lack of an effective remedy and discrimination in general with regard to her complaint under Article 5 of the Convention. The Court considers that this complaint should be examined under Article 5 § 4 of the Convention.

9. The Government contested the applicants' arguments.

A. Admissibility

10. The Government put forward various preliminary objections concerning exhaustion of domestic remedies and victim status of the applicant in application no. 24572/08 and asked the Court to dismiss the complaints under Article 5 §§ 3 and 4 of the Convention, as required by Article 35 § 1 of the Convention.

11. The Court notes that it has already examined similar submissions made by the respondent Government in other cases (see, for example, *Ari and Şen v. Turkey*, no. 33746/02, § 19, 2 October 2007; *Koştı and Others*

v. Turkey, no. 74321/01, §§ 19-24, 3 May 2007; *Şayık and Others v. Turkey*, cited above, §§ 28-32, and *Yiğitdoğan v. Turkey*, no. 20827/08, § 19, 16 March 2010).

12. The Government have not submitted any arguments which could lead the Court to reach a different conclusion in the instant case. Consequently, the Court rejects the Government's preliminary objections.

13. 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

1. Article 5 § 3 of the Convention

14. The Government maintained that the applicants' detention was based on the existence of reasonable grounds of suspicion of them having committed an offence, and that their detention had been reviewed periodically by the competent authority, with special diligence, in accordance with the requirements laid down by the applicable law. They pointed out that the offences with which the applicants were charged were of a serious nature, and that their continued remand in custody was necessary to prevent crime and to preserve public order.

15. The Court notes that, after deducting the period when the applicants were detained after conviction under Article 5 § 1 (a) of the Convention from the total time that they have been held in pre-trial detention, the period to be taken into consideration is already over ten years and three months in application no. 38372/06 and over seven years and six months in application no. 24572/08. Their pre-trial detention is still continuing (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-II (extracts)).

16. The Court has frequently found violations of Article 5 § 3 of the Convention in cases disclosing comparable lengthy periods of pre-trial detention (see, for example, *Tutar v. Turkey*, no. 11798/03, § 20, 10 October 2006, and *Cahit Demirel v. Turkey*, no. 18623/03, § 28, 7 July 2009). 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 applicants' pre-trial detention was excessive.

17. There has accordingly been a violation of Article 5 § 3 of the Convention.

2. Article 5 § 4 of the Convention

18. In respect of application no. 38372/06 the Government submitted that the applicant did in fact have the possibility of challenging her continued remand by lodging objections. They further stated that the applicant could seek compensation under Article 141 of the new CCP following its entry into force on 1 June 2005.

19. In respect of application no. 24572/08 the Government maintained that the applicant had not objected to her continued remand either under Article 297 and following articles of the former CCP (Law no. 1412), or under Article 104 (2) of the new CCP. They further contended that it was possible to challenge the lawfulness of pre-trial detention pursuant to Article 101 (5) of the new CCP.

20. The applicants maintained their allegations.

21. The Court has already examined the possibility of challenging the lawfulness of pre-trial detention in Turkey in other cases and concluded that the Government had failed to show that the remedy they referred to provided for a procedure that was genuinely adversarial for the accused (see, for example, *Koştı and Others v. Turkey*, cited above, §§ 19-24; *Şayık and Others v. Turkey*, cited above, §§ 28-32 and *Yiğitdoğan v. Turkey*, cited above, § 19). The Court notes that the Government have not put forward any argument or material in the instant case which would require the Court to depart from its previous findings.

22. In the light of the foregoing the Court concludes that there has been a breach of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

A. Length of proceedings

23. The applicant in application no. 38372/06 complained that the length of the criminal proceedings against her had been incompatible with the reasonable time requirement, laid down in Article 6 § 1 of the Convention. She further complained under Article 13 of the Convention that there had been no effective remedy in domestic law whereby she could challenge the excessive length of the proceedings in question. The Government disputed this allegation.

24. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

25. As regards the merits of the complaint under Article 6 § 1 of the Convention, the Government submitted that the length of the proceedings

could not be considered to be unreasonable in view of the complexity of the case, the number of the accused and the nature of the offence with which the applicant was charged.

26. The Court notes that the criminal proceedings commenced on 29 July 1996 when the applicant was taken into police custody, and according to the information in the case file, they are still pending before the first-instance court. They have thus already lasted over fourteen years and one month before two levels of jurisdiction.

27. The Court has frequently found violations of Article 6 § 1 of the Convention in applications raising issues similar to the one in the present case (see *Bahçeli v. Turkey*, no. 35257/04, § 26, 6 October 2009; *Er v. Turkey*, no. 21377/04, § 23, 27 October 2009). 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. The Court therefore considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

28. There has accordingly been a breach of Article 6 § 1 of the Convention.

29. As regards the merits of the complaint under Article 13 of the Convention, the Government maintained that the applicant could seek compensation under Articles 141 and 142 of the new CCP following its entry into force on 1 June 2005.

30. The Court notes that according to Article 142 § 1 of the new CCP, a request for compensation may only be made after the relevant criminal proceedings have come to an end. This remedy is therefore not available in circumstances where the domestic proceedings are still pending, as in the instant case (*Tunçe and others v. Turkey*, nos. 2422/06, 3712/08, 3714/08, 3715/08, 3717/08, 3718/08, 3719/08, 3724/08, 3725/08, 3728/08, 3730/08, 3731/08, 3733/08, 3734/08, 3735/08, 3737/08, 3739/08, 3740/08, 3745/08, and 3746/08, §§ 35-37, 13 October 2009).

31. The Court has examined similar issues in previous applications and has found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicants could have contested the length of the proceedings at issue (see, most recently, *Daneshpayeh v. Turkey*, no. 21086/04, §§ 35-38, 16 July 2009). It finds no reason to depart from that conclusion in the present case.

32. There has accordingly been a violation of Article 13 of the Convention.

B. Independence and impartiality of the proceedings before the İstanbul State Security Court

33. The applicant in application no. 38372/06 complained under Article 6 of the Convention that she was denied a fair trial by an independent and impartial tribunal on account of her trial before the İstanbul State Security Court until its abolition.

34. The Court observes that the criminal proceedings against the applicant are still pending. The applicant's complaint is therefore premature. Consequently, this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (see, for example, *Koç v. Turkey* (dec.), no. 36686/07, 26 February 2008).

IV. 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 applicant in application no. 38372/06 claimed 80,000 euros (EUR) in respect of non-pecuniary damage.

37. The applicant in application no. 24572/08 claimed EUR 30,000 for non-pecuniary damage. She further claimed EUR 23,320 for pecuniary damage.

38. The Government contested these claims.

39. 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 applicants must have sustained non-pecuniary damage.

40. In the light of the Court's jurisprudence and ruling on an equitable basis, it awards the applicant in application no. 38372/06 EUR 15,600 for non-pecuniary damage. As for application no. 24572/08 the Court awards the applicant EUR 8,800 under this head.

41. Furthermore, according to the information submitted by the parties, the criminal proceedings against the applicants are still pending and the applicants are still detained. 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, or to release the applicants pending the outcome of these proceedings (see *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007; *Batmaz v. Turkey* (dec.), no. 34997/06, 1 April 2008).

B. Costs and expenses

42. The applicant in application no. 38372/06 claimed EUR 175 for costs and expenses. She also claimed EUR 6,055 in respect of her lawyer's fee. In support of her claims she submitted a time-sheet prepared by her lawyer, a legal fee agreement and a table of costs and expenses.

43. The applicant in application no. 24572/08 claimed EUR 946 for costs and expenses incurred before the domestic courts and EUR 7,980 for those incurred before the Court. In support of her claims she submitted a legal fee agreement, invoices for postal and translation expenses as well as for the legal fees effected.

44. The Government contested these claims.

45. 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 to the applicant in application no. 38372/06 and of EUR 2,500 to the applicant in application 24572/08. These amounts cover costs under all heads.

C. Default interest

46. 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the length of pre-trial detention and the lack of a remedy to challenge the lawfulness of the pre-trial detention brought by both applicants, and the complaints concerning the length of criminal proceedings and the lack of a domestic remedy in respect of this complaint brought by the applicant in application no. 38372/06 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 §§ 3 and 4 of the Convention in respect of both applicants;
4. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention in respect of Gülpınar Adıyaman (application no. 38372/06);
5. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 on the date of settlement:
 - (i) EUR 15,600 (fifteen thousand six hundred euros) to the applicant in application no. 38372/06 and EUR 8,800 (eight thousand eight hundred euros) to the applicant in application no. 24572/08 in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 1,000 (one thousand euros) to the applicant in application no. 38372/06 and EUR 2,500 (two thousand five hundred euros) to the applicant in application no. 24572/08, in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
 - (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;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 26 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

Information concerning the application	Date of the arrest	Date of the order for pre-trial detention	Date of the bill of indictment	Date of the judgments of the first instance court	Date of the decisions of the Court of Cassation	Objections to the pre-trial detention or continued pre-trial detention	Total period of pre-trial detention and of proceedings where relevant (on the basis of the information in the case file)	Grounds for continued detention
1 - 38372/06 introduced on 23 September 2006 by Gülpınar ADİYAMAN represented by Gülizar Tuncer	29/07/1996	29/07/1996 (released on 24/03/2006 and detained again on 24/10/2008)	18/12/1996	1) İstanbul State Security Court – 26/12/2001 (E: 1996/393, K: 2001/435) 2) İstanbul Assize Court – 21/03/2007 (E: 2003/175, K: 2007/69) 3) Pending before the İstanbul Assize Court (E: 2008/100)	1) 13/05/2003 (E: 2002/2389, K: 2003/821) (set aside) 2) 6/02/2008 (E: 2007/11339, K: 2008/684) (set aside)	Lodged on 27/10/2008 and dismissed on 10/11/2008	10 years and 3 months (length of pre-trial detention) 14 years and 1 month (length of the proceedings)	- the nature of the offence - the content of the case file - the state of the evidence - danger of flight - persistence of the grounds for continued detention indicated in Article 100 of the new CCP - strong suspicion of having committed the offence charged - overall period of the pre-trial detention - insufficiency of other measures

Information concerning the application	Date of the arrest	Date of the order for pre-trial detention	Date of the bill of indictment	Date of the judgments of the first instance court	Date of the decisions of the Court of Cassation	Objections to the pre-trial detention and/or continued pre-trial detention	Total period of pre-trial detention (on the basis of the information in the case file)	Grounds for continued detention
2 - 24572/08 introduced on 21 May 2008 by Güllüzar ERMAN represented by Faruk Nafiz Ertekin	9/04/ 2003	13/04/2003	23/07/2003	Pending before İstanbul Assize Court (E: 2003/213)		1) Lodged on 25/07/2007 and dismissed on 9/08/2007 (2007/404) 2) Lodged on an unspecified date and dismissed on 10/01/2008 (2008/6) 3) Lodged on 6/04/2009 and dismissed on 17/04/2009 (2009/347)	7 years and 6 months	- nature of the offence - state of the evidence - limit of the sentence envisaged for the crime in issue - persistence of the grounds for continued detention indicated in Article 100 of the new CCP - evidence not collected yet