



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

SECOND SECTION

CASE OF AKALIN v. TURKEY

(Application no. 23480/06)

JUDGMENT

STRASBOURG

23 November 2010

FINAL

23/02/2011

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

In the case of Akalın v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 23480/06) 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 Nuri Akalın (“the applicant”), on 10 May 2006.

2. The applicant was represented by Ms İ. Kadirhan and Ms G. Tuncer, lawyers practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 19 May 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and detained in Kandıra prison.

5. On 3 March 1997 the applicant was arrested on suspicion of being a member of an illegal organisation.

6. On 14 March 1997 the applicant was examined by a doctor. The medical report drawn up by the doctor indicated that there was hyperaemia on the applicant's thighs.

7. On the same day the applicant was brought before the public prosecutor, where he stated that he had been stripped and hosed with water under police custody.

8. On the same day the judge at the İstanbul State Security Court ordered his pre-trial detention. Before the judge the applicant stated that his statement in police custody had been taken under torture, but he did not give any details.

9. On 28 April 1997 the public prosecutor at the İstanbul State Security Court issued an indictment charging the applicant with attempting to undermine the constitutional order under Article 146 of the former Criminal Code.

10. On 7 July 1997 the applicant stated before the İstanbul State Security Court that his statement in police custody had been taken under torture, without giving any details.

11. On 26 April 2002 the İstanbul State Security Court convicted the applicant under Article 146 of the former Criminal Code.

12. On 12 May 2003 the Court of Cassation quashed the judgment of 26 April 2002.

13. 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 İstanbul Assize Court.

14. On 25 December 2008 and 9 April 2009 the applicant objected to his continued detention and requested his release. The 11th Chamber of the İstanbul Assize Court dismissed the applicant's objections on 14 January and 15 April 2009 respectively, having regard to the nature of the offence in question and to the state of the evidence. No hearing was held.

15. On 2 April 2009 the İstanbul Assize Court convicted the applicant.

16. According to information in the case file, the case is pending before the Court of Cassation.

17. Throughout the proceedings, the first instance courts examined the applicant's continued detention at the end of each hearing, either on their own motion or upon the applicant's requests. Each time the courts ordered the applicant's continued detention having regard to the state of the evidence, the nature of the offence, the strong suspicion of his having committed the offence in issue, the danger of flight, the overall period of the pre-trial detention, and the persistence of the grounds for the continued detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. A description of the relevant domestic law and practice prior to the entry into force of the new Code of Criminal Procedure (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 Law no. 5271 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. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

19. The applicant complained under Articles 3 and 13 of the Convention that he had been subjected to ill-treatment while in police custody and that there had been no effective remedy at his disposal as regards his complaints of ill-treatment.

20. The Court observes that the applicant most recently submitted his allegations of ill-treatment during the proceedings on 7 July 1997. He did not pursue these allegations in the course of other court hearings. Nor did the İstanbul State Security Court mention the applicant's allegation in its judgment of 26 April 2002.

21. In the particular circumstances of the present case, the Court considers that the failure of the judicial authorities to act must have become gradually apparent to the applicant by 26 April 2002, i.e. the date on which the İstanbul State Security Court rendered its judgment, and that the applicant should therefore have been aware of the ineffectiveness of remedies in domestic law by that date. Accordingly, the six month period provided for in Article 35 of the Convention should be considered to have started running not later than 26 April 2002 (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003). However, the application was introduced with the Court on 10 May 2006, more than six months later.

22. It follows that these complaints have been introduced out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

23. The applicant complained under Articles 3 and 5 §§ 1, 2 and 3 of the Convention that both the length of his detention in police custody and the length of his pre-trial detention had been excessive. He further complained under Article 6 § 2 of the Convention that his right to be presumed innocent had been violated because he had been detained on remand for an excessive length of time. The applicant maintained that the postponement by Law no. 5320 of the date of enforcement of Article 102 of the new CCP, which regulates the maximum authorised length of pre-trial detention, to

31 December 2010 for certain types of offences including his own, violated Article 14 of the Convention. He claimed under Article 13 of the Convention that there had been no effective remedy for his grievance under Article 14. The Court deems it appropriate to examine all these complaints from the standpoint of Article 5 § 3 alone as they mainly concern the length of the applicant's pre-trial detention (*Ayhan Işık v. Turkey* (dec.), no. 33102/04, 16 December 2008, and *Can v. Turkey* (dec.), no. 6644/08, 14 April 2009).

24. The applicant further complained under Articles 5 § 4, 6 § 1 and 13 of the Convention that there was no effective remedy by which to challenge the lawfulness of the length of his pre-trial detention. The Court considers that this complaint must be examined under Article 5 § 4 of the Convention alone.

A. Article 5 § 3 of the Convention

1. As regards the length of detention in police custody

25. The Court observes that the applicant's police custody ended on 14 March 1997 whereas the application was lodged with the Court on 10 May 2006, that is, more than six months later (see *Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004, and *Doğan v. Turkey* (dec.), no. 67214/01, 7 June 2005).

26. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. As regards the length of pre-trial detention

27. 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.

28. As regards merits, the Government maintained that the applicant's detention was based on the existence of reasonable grounds of suspicion of his having committed an offence, and that his 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 offence with which the applicant was charged was of a serious nature, and that his continued remand in custody was necessary to prevent crime and to preserve public order.

29. The Court notes that, after deducting the period when the applicant was detained after conviction under Article 5 § 1 (a) of the Convention the period to be taken into consideration in the instant case is over eleven years (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-II (extracts)).

30. 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 applicant's pre-trial detention was excessive.

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

B. Article 5 § 4 of the Convention

32. 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.

33. As regards the merits, the Government submitted that the applicant did in fact have the possibility of challenging his 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.

34. The applicant maintained his allegations.

35. 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 and *Şayık and Others v. Turkey*, cited above, §§ 28-32). 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.

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

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

37. The applicant complained that the length of the criminal proceedings against him had been incompatible with the reasonable time requirement, laid down in Article 6 § 1 of the Convention. The Government disputed this allegation.

38. 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.

39. As regards the merits, 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.

40. The Court notes that the proceedings in question commenced on 3 March 1997 when the applicant was taken into police custody, and according to the information in the case file, they are still pending before the Court of Cassation. They have thus already lasted over thirteen years and seven months before two levels of jurisdiction.

41. 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, and *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. There has accordingly been a breach of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government contested this claim.

45. The Court awards the applicant EUR 17,200 in respect of non-pecuniary damage.

46. 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 of 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 (see *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007).

B. Costs and expenses

47. The applicant claimed EUR 11,605 for cost and expenses. In support of his claims, the applicant submitted a legal fee agreement and invoices for the legal fees paid.

48. The Government contested this claim.

49. 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 under all heads.

C. Default interest

50. 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 complaints concerning the length of pre-trial detention, the lack of a remedy to challenge the lawfulness of the pre-trial detention and the length of the criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 §§ 3 and 4 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 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 on the date of settlement:
 - (i) EUR 17,200 (seventeen thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

- (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
- (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 23 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President