



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

SECOND SECTION

CASE OF YER AND GÜNGÖR v. TURKEY

(Applications nos. 21521/06 and 48581/07)

JUDGMENT

STRASBOURG

7 December 2010

FINAL

07/03/2011

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

This version was rectified on 21 June 2011 under Rule 81 of the Rules of Court.

In the case of Yer and Güngör v. Turkey,

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

Ireneu Cabral Barreto, *President*¹,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 16 November 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 21521/06 and 48581/07) 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 two Turkish nationals, Şereffettin² Yer and Ayhan Güngör, both born in 1976. The dates of introduction of the applications and the names of the applicants' representatives are indicated in the appended table. The Turkish Government (“the Government”) were represented by their Agent.

2. On 12 June 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 (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicants are Turkish nationals who were arrested and subsequently detained pending judicial proceedings. They were either released or convicted on various dates. The details of the dates of the arrests, the dates of the orders for the applicants' pre-trial detention, the

¹ On 1st February 2011, Mrs Danutė Jočienė succeeded Mr Ireneu Cabral Barreto as President.

² Rectified on 21 June 2011. The applicant's name reading “Şerafettin” was changed.

dates of the indictments, the dates of the domestic court decisions, the total period of pre-trial detention, total period of criminal proceedings where relevant, the dates of release and the grounds for continued detention are set out in the appendix hereto.

II. RELEVANT DOMESTIC LAW AND PRACTICE

4. 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 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

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

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

6. The applicant in application no. 21521/06 complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power.

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. 21521/06 further complained under Article 6 § 2 of the Convention that his right to be presumed innocent had been violated in that he had been under pre-trial detention for an excessive length of time. The Court considers it appropriate to examine these complaints from the standpoint of Article 5 § 3 alone.

8. The Government contested the applicants' arguments.

A. As regards the length of the detention in police custody of the applicant in application no. 21521/06

9. The Court observes that the applicant's police custody ended on 4 January 2001 whereas the application was lodged with the Court on

27 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).

10. 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.

B. As regards the length of pre-trial detention

11. 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.

12. As regards the merits, the Government maintained that the applicants' detention had been based on the existence of reasonable grounds of suspicion of them having committed an offence, and that their detention had been reviewed periodically by a 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 had been charged had been of a serious nature, and that their continued remand in custody had been necessary to prevent crime and to preserve public order.

13. The Court notes that, excluding 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 detention, the period to be taken into consideration is over four years and eleven months in application no. 21521/06 and over five years and four months in application no. 48581/07 (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-II (extracts)).

14. 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, *Gökçe and Demirel v. Turkey*, no. 51839/99, § 44, 22 June 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.

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

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. As to the complaint concerning the length of the criminal proceedings

16. The applicants complained that the length of the criminal proceedings against them had been incompatible with the reasonable time requirement, laid down in Article 6 § 1 of the Convention.

17. 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.

18. 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 offences with which the applicants were charged.

19. The Court notes that the period to be taken into consideration is over seven years and six months in application no. 21521/06 and over six years and seven months in application no. 48581/07.

20. Having examined all the material submitted to it, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement (see *Daneshpayeh v. Turkey*, no. 21086/04, § 28, 16 July 2009). There has accordingly been a breach of Article 6 § 1 of the Convention.

B. As to the complaint concerning the absence of legal assistance during police custody

21. The applicant in application no. 48581/07 complained that he had been denied legal assistance during his detention in police custody.

22. The Government maintained that there had been no violation under this head since the applicant had benefited from legal assistance during police custody. In support of this argument, the Government submitted the custody form signed by the applicant and his lawyer showing that the applicant had benefited from legal assistance during police custody.

23. Having regard to the document demonstrating that the applicant benefited from legal assistance during police custody on 22 September 2000, the Court finds that the applicant has failed to substantiate his allegation. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

C. As to the remaining complaints under Article 6 of the Convention

24. The applicant in application no. 48581/07 claimed under Article 6 of the Convention that he had been denied a fair trial on account of his conviction based on his statements given to the police under duress, his trial by the State Security Court, and the failure of the first-instance court to hear his witness.

25. In the light of all the material in its possession, the Court finds that the above submissions by the applicant do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant in application no. 21521/06 claimed 50,000 Turkish Liras (TRY) (approximately 25,271 euros (EUR)) in respect of pecuniary damage and TRY 40,000 (approximately EUR 20,217) for non-pecuniary damage.

28. The applicant in application no. 48581/07 claimed EUR 15,000 in respect of non-pecuniary damage.

29. The Government contested these claims.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the relevant claim. However, the Court considers that the applicants must have sustained non-pecuniary damage.

31. In the light of the Court's jurisprudence and ruling on an equitable basis, it makes the following awards:

- (i) EUR 8,000 to the applicant in application no. 21521/06; and
- (ii) EUR 8,500 to the applicant in application no. 48581/07.

B. Costs and expenses

32. The applicant in application no. 21521/06 claimed TRY 122,625 (approximately EUR 61,978) for lawyer's fee and for costs and expenses in the domestic proceedings and before the Court, which included expenditure such as telephone calls, mail, translation fees, stationery and travel costs. In support of his claims he submitted the İstanbul Bar Association's scale of fees and a receipt for the legal fee incurred.

33. The applicant in application no. 48581/07 claimed TRY 4,270 (approximately EUR 2,160) for legal fees and TRY 90 (approximately EUR 45) for costs and expenses. In support of his claims he submitted a receipt for the legal fee incurred.

34. The Government contested these claims.

35. 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. Regard being had to the documents in its possession and the above criteria the Court makes the following awards under this head:

- (i) EUR 500 to the applicant in application no. 21521/06; and
- (ii) EUR 1000 to the applicant in application no. 48581/07.

C. Default interest

36. 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 length of the criminal proceedings admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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, plus any tax that may be chargeable to the applicants:

- (i) to Mr Şereffettin¹ Yer, EUR 8,000 (eight thousand euros) for non-pecuniary damage and EUR 500 (five hundred euros) for costs and expenses;
- (ii) to Mr Ayhan Güngör, EUR 8,500 (eight thousand five hundred euros) for non-pecuniary damage and EUR 1,000 (one thousand euros) for 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Danutė Jočienė
President

¹ Rectified on 21 June 2011. The applicant's name reading "Şerafettin" was changed.

Application	Date of arrest	Date of the order for the 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	Date of the release of the applicant where applicable	Total period of pre-trial detention (on the basis of the information in the case file)	Grounds for continued detention (on the basis of the information in the case file)
1-21521/06 introduced on 27/05/2006 by Şerafettin YER represented by Ercan Kanar	28/12/2000	04/01/2001	08/01/2001	İstanbul Assize Court - 27/04/2007 (E: 2001/23, K: 2007/208)	09/07/2008- (E: 2008/9435, K:2008/8881) (upheld)	30/11/2005	4 years and 11 months (pre-trial detention) 7 years and 6 months (proceedings)	- the state of the evidence - the nature of the offence - the overall period of pre-trial detention
2- 48581/07 introduced on 22/10/2007 by Ayhan GÜNGÖR represented by Metin Atlan	19/09/2000	25/09/2000	02/11/2000	1. İstanbul State Security Court -21/11/2003 (E: 2000/254, K: 2003/325) 2. İstanbul Assize Court - 26/09/2006 (E: 2004/248, K: 2006/207)	1. 12/07/2004 – (E: 2004/1507, K: 2004/3878) (set aside) 2. 07/05/2007- (E: 2007/3113, K: 2007/3830) (upheld)		5 years and 4 months (pre-trial detention) 6 years and 7 months (proceedings)	- the nature of the offence - the state of the evidence - the overall period of pre-trial detention - persistence of the grounds for continued detention indicated in Article 100 of the CCP