



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

SECOND SECTION

CASE OF FETİ ATEŞ AND OTHERS v. TURKEY

(Applications nos. 34759/04, 28588/05, 1016/06 and 19280/06)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

21/03/2011

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



In the case of Ateş and others 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 30 November 2010,

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

PROCEDURE

1. The case originated in four applications (nos. 34759/04, 28588/05, 1016/06, and 19280/06) 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 four Turkish nationals, Feti Ateş, Nursel Demirdöğücü, Hakkı Alçın, and Metin Durmaz (“the applicants”), born in 1972, 1964, 1980 and 1955 respectively. 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 10 September 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 released on various dates. The details of the dates of the arrests, the dates of the orders for the applicants' pre-trial detention, the dates of the indictments, the dates of the domestic court decisions, the total period of pre-trial detention, total period of criminal proceedings, 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 (Law no. 5271) (“the CCP”) 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 applicants complained under Article 5 § 3 of the Convention that the length of their pre-trial detention had been excessive.

7. The Government contested the applicants' arguments.

A. As regards the applicant in application no. 19280/06

8. The Court notes that, after excluding the period when the applicant was detained after conviction under Article 5 § 1 (a) of the Convention from the total time that he has been held in pre-trial detention, the period to be taken into consideration is one year and eleven months (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-II (extracts)).

9. The Court observes that, given the nature of the offence the applicant was charged with, the length of time he spent in detention was not unreasonable. Furthermore, the applicant did not submit any document or argument demonstrating that the length of his detention on remand was attributable to a lack of special diligence on the part of the authorities (see *Kılıçöz v. Turkey* (dec.), no. 26662/05, 14 September 2010). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. As regards the remaining applicants

10. 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.

11. As regards 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.

12. The Court notes that, after 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 pre-trial detention, the period to be taken into consideration is over eight years and three months in application no. 34759/04; over thirteen years and four months in application no. 28588/05; and over four years and four months in application no. 1016/06 (*Solmaz v. Turkey*, cited above, §§ 36-37).

13. 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.

14. 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

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

16. 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.

17. 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 applicants were charged.

18. The Court notes that the shortest duration of the criminal proceedings in the present case is over seven years and three months (see appended table).

19. 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 in respect of all the applicants.

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

20. The applicant in application no. 1016/06 complained that he had been denied legal assistance during his detention in police custody.

21. 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.

22. The Government argued that the absence of legal assistance at the initial stages of the criminal proceedings did not affect the applicant's defence rights considering that he benefited from legal assistance at the subsequent stages of the trial.

23. The Court observes that it has already examined the same grievance in the case of *Salduz v. Turkey* and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 ([GC], no. 36391/02, §§ 56-62, 27 November 2008).

24. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Salduz* judgment. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in respect of the applicant in application no. 1016/06.

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

25. The applicant in application no. 34759/04 complained under Article 6 of the Convention that he had not been tried by an independent and impartial tribunal on account of his trial before the State Security Court until its abolition. The applicant in application no. 1016/06 claimed that he had been denied a fair trial on account of his conviction based on his statements given to the police under duress. Lastly, the applicant in application no. 19280/06 complained under the same Article that he was denied a fair trial as the national courts failed to assess the domestic law and the evidence in the case file properly.

26. In the light of all the material in its possession, the Court finds that the above submissions by the applicants 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

27. 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

28. The applicant in application no. 28588/05 claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

29. The applicant in application no. 1016/06 claimed 100,000 Turkish Liras (TRY) (approximately EUR 50,588) in respect of non-pecuniary damage and TRY 16,500 (approximately EUR 8,347) for pecuniary damage.

30. The applicant in application no. 19280/06 claimed TRY 120,000 (approximately EUR 61,000) each for pecuniary and non-pecuniary damage.

31. The Government contested these claims.

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

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

- (i) EUR 20,900 to the applicant in application no. 28588/05;
- (ii) EUR 6,900 to the applicant in application no. 1016/06; and
- (iii) EUR 3,600 to the applicant in application no. 19280/06.

34. The applicant in application no. 34759/04 did not claim any pecuniary or non-pecuniary damage. Accordingly, no award is made under this head.

35. The Court further considers that the most appropriate form of redress would be the re-trial of the applicant in application no. 1016/06 in accordance with the requirements of Article 6 § 1 of the Convention, should he so request (see *Salduz*, cited above, § 72).

36. Furthermore, according to the information submitted by the parties, the criminal proceedings against the applicants in applications nos. 34759/04 and 28588/05 are still pending. In these circumstances, the Court considers that an appropriate means for putting an end to the violations which it has found it would be to conclude the criminal proceedings at 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

37. The applicant in application no. 28588/05 claimed EUR 3,300 for lawyer's fee and EUR 1,000 for costs and expenses. In support of her claims she submitted a time-sheet and a table for costs and expenses.

38. The applicant in application no. 1016/06 claimed TRY 12,750 (approximately EUR 6,460) for legal fees and TRY 22,425 (approximately EUR 11,360) for costs and expenses before the domestic courts. In support of his claims he submitted a receipt for the legal fee incurred and the İstanbul Bar Association's scale of fees.

39. The applicant in application no. 19280/06 claimed TRY 56,000 (approximately EUR 28,327) for costs and expenses. In support of his claim he submitted a legal fee agreement.

40. The Government contested these claims.

41. 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 finds it reasonable to award EUR 500 each to the applicants in applications nos. 28588/05, 1016/06 and 19280/06. These amounts cover costs under all heads.

42. The applicant in application no. 34759/04 did not claim any costs and expenses. Accordingly, no award is made under this head.

C. Default interest

43. 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 the criminal proceedings in respect of all the applicants, the length of pre-trial detention brought by the applicants in applications nos. 34759/04, 28588/05 and 1016/06, and the lack of legal assistance during police custody brought by the applicant in application no. 1016/06 admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the applicants in applications nos. 34759/04, 28588/05 and 1016/06;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings against all applicants;
5. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 of the Convention on account of the lack of legal assistance while in police custody in respect of the applicant in application no. 1016/06;
6. *Holds*
 - (a) that the respondent State is to pay the applicants mentioned below, 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 Ms Nursel Demirdöğücü, EUR 20,900 (twenty thousand nine hundred euros) for non-pecuniary damage and EUR 500 (five hundred euros) for costs and expenses;
 - (ii) to Mr Hakkı Alçın, EUR 6,900 (six thousand nine hundred euros) for non-pecuniary damage and EUR 500 (five hundred euros) for costs and expenses;

(iii) to Mr Metin Durmaz, EUR 3,600 (three thousand six hundred euros) for non-pecuniary damage and EUR 500 (five hundred 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;

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

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

APPENDIX

Application No.	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- 34759/04 introduced on 11/06/2004 by Feti Ateş represented by Kamil Tekin Sürek	21/08/1996	03/09/1996	06/12/1996	1. İstanbul State Security Court- 20/05/2002 (E:1996/354, K:2002/105) 2. İstanbul Assize Court- 21/10/2009 (E: 2003/315, K: 2009/260)	1. 30/09/2003 (E: 2003/1241, K: 2003/1597) (set aside) 2. Pending	31/03/2006	8 years and 3 months (pre-trial detention) 14 months and 2 months (proceedings)	- the nature of the offence - the state of the evidence - overall period of the pre-trial detention
2- 28588/05 introduced on 23/07/2005 by Nursel Demirdöğücü represented by Taylan Talay	29/09/1992	12/10/1992	08/01/1993	1. İstanbul Assize Court - 02/05/2005 (E:1993/114, K:2005/64) 2. Pending before the İstanbul Assize Court (E: 2006/221)	11/07/2006 (E:2006/1537, K: 2006/4178) (set aside)	02/05/2007	13 years and 4 months (pre-trial detention) 18 years and a month (proceedings)	- the nature of the offence - the state of the evidence - overall period of the pre-trial detention- danger of flight - the stage of the trial - strong suspicion of having committed the offence charged - the scope and particularity of the trial

Application No.	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)
3- 1016/06 introduced on 13/12/2005 by Hakkı Alçın represented by Ercan Kanar	07/02/2001	13/02/2001	19/02/2001	İstanbul Assize Court 22/06/2007 (E:2001/82,K:2007/329)	05/11/2008 (E: 2008/8457,K: 2008/11807) (upheld)	15/06/2005	4 years and 4 months (pre-trial detention) 7 years and 8 months (proceedings)	- the nature of the offence - the state of the evidence - overall period of the pre-trial detention - danger of flight - the severity of the offence charged
4- 19280/06 introduced on 10/04/2006 by Metin Durmaz represented by Ahmet Arısoy	26/10/2002	26/10/2002	18/11/2002	1. Aksaray Assize Court 11/03/2004 (E: 2002/293, K: 2004/75) 2. Aksaray Assize Court 20/04/2006 (E:2006/35, K: 2006/170) 3. Aksaray Assize Court 02/12/2008 (E:2007/241, K: 2008/333)	1. 23/11/2005 (E:2005/821, K: 2005/3532) (set aside) 2. 21/11/2007 (E:2007/1977, K: 2007/8604) (set aside) 3. 03/02/2010 (upheld)	24/01/2008	1 year and 11 months (pre-trial detention) 7 years and 3 months (proceedings)	- the content of the case file - the state of the evidence - overall period of the pre-trial detention