



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

SECOND SECTION

CASE OF ERKAN AYDOĞAN AND OTHERS v. TURKEY

*(Applications nos. 30441/08, 35835/08, 36481/08, 36482/08, 36483/08,
36484/08 and 36485/08)*

JUDGMENT

STRASBOURG

8 February 2011

FINAL

08/05/2011

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



In the case of Erkan Aydoğan and others v. Turkey,
The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Dragoljub Popović,
Nona Tsotsoria,
İşıl Karakaş,
Kristina Pardalos,
Guido Raimondi, *judges*,
and Stanley Naismith, *Section Registrar*,
Having deliberated in private on 18 January 2011,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in seven applications (nos. 30441/08, 35835/08, 36481/08, 36482/08, 36483/08, 36484/08 and 36485/08) 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 seven Turkish nationals, Erkan Aydoğan, Selaattin Demir, Nurettin Kılıçdoğan, Halil Ketten, Binali Güney, Hüseyin Babayiğit and Atilla Yılmaz (“the applicants”), born in 1976, 1965, 1963, 1967, 1964, 1968, and 1974 respectively. The applications were introduced on 2 June 2008.

2. The applicants were represented by Mr F. Saygılı and Mr O. Durmaz, lawyers practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. 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

4. The applicants are Turkish nationals who were arrested on suspicion of founding an organisation for the purpose of committing crime, harming property, violating the right to peaceful work through coercion in order to

obtain unfair pecuniary gain, obstructing enjoyment of union rights and subsequently detained pending judicial proceedings. They were released on 6 June 2008. The details of the date of the arrests, the date of the orders for the applicants' pre-trial detention, the date of the indictment, the total period of pre-trial detention, total period of criminal proceedings, the date of release and the grounds for continued detention are set out in the appendix hereto.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Judicial review of pre-trial detention

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 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).

B. Compensation for unlawful detention

6. The current practice may be found in Section 1 of Article 141 of the CCP, which provides:

“Persons; ...

- a) who were unlawfully arrested, detained or held in continued detention,
- b) who were not brought before a judge within the period prescribed by law,
- c) who were detained without being informed of their rights or without being allowed to exercise these rights against their wishes,
- d) who were lawfully detained but not brought before a legal authority within a reasonable time and who were not tried within a reasonable time,
- e) who, after being arrested or detained in accordance with the law, were not subsequently committed for trial or were acquitted,
- f) who were sentenced to a period of imprisonment shorter than the period spent in police custody and detention or ordered to pay a pecuniary penalty because it was the only sanction provided for the crime concerned,
- g) who were not informed of the reasons for their arrest or detention in writing or where this was not immediately possible, verbally,

- h) whose close family were not informed of their arrest or detention,
- i) whose arrest warrant was implemented in a disproportionate manner,
- j) whose belongings or other property were confiscated in the absence of requisite guarantees or without the necessary measures being taken for their protection, or whose belongings and other property were used for unauthorised reasons or were not returned on time,

during criminal investigation or prosecution may demand compensation for all pecuniary and non-pecuniary damage they sustained from the State.”

7. Section 1 of Article 142 of the CCP further provides:

“Compensation may be demanded [from the State] within three months from the date of service of the final ... judgment and, in any case, within one year following the date on which the ... judgment becomes final.”

THE LAW

I. JOINDER

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

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

9. The applicants complained under Article 5 § 3 of the Convention that the length of their pre-trial detention had been excessive. They further complained under Article 6 § 2 of the Convention that their right to be presumed innocent had been violated in that they had been held in 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.

10. The applicants contended under Articles 5 § 4 and 13 of the Convention that there had been no effective remedy to challenge the lawfulness of the length of their pre-trial detention. The Court considers it appropriate to examine this complaint under Article 5 § 4 alone.

11. Lastly, the applicants maintained under Article 5 § 5 of the Convention that they had had no right to compensation in domestic law for the alleged violation of Article 5 §§ 3 and 4 of the Convention.

A. Article 5 § 3 of the Convention

12. 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 applicants contested these arguments.

14. The Court notes that the applicants' pre-trial detention lasted from 20 November 2007 to 6 June 2008, that is, approximately six months.

15. The Court observes that, given the nature of the offence the applicants were charged with, the length of time they spent in detention was not unreasonable (see *Ateş v. Turkey* (dec.), no. 2694/06, 17 November 2009). 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. Article 5 § 4 of the Convention

16. The Government submitted that the applicants had in fact had the possibility of challenging their pre-trial detention by lodging objections pursuant to Article 297 and following articles of the former CCP or under Article 104 (2) of the CCP. They further contended that it had been possible to challenge the lawfulness of pre-trial detention pursuant to Article 101 (5) of the CCP.

17. The applicants maintained their allegations.

18. 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 above-mentioned remedies provided for a procedure that was genuinely adversarial for the accused (see, for example, *Koşti and Others v. Turkey*, no. 74321/01, § 19-24, 3 May 2007; *Şayık and Others*, cited above, §§ 28-32; and *Yiğitdoğan v. Turkey*, no. 20827/08, §§ 28-31, 16 March 2010).

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.

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

C. Article 5 § 5 of the Convention

21. The Government argued that Turkish law had afforded the applicants an enforceable right to compensation, contrary to their allegations. They maintained in this regard that the applicants could have sought compensation under Article 141 and following articles of the CCP following its entry into force on 1 June 2005.

22. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (*Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (*Saraçoğlu and Others v. Turkey*, no. 4489/02, § 50, 29 November 2007).

23. The Court notes that in the present case it has found that the applicants' right to challenge the lawfulness of their pre-trial detention was infringed (see paragraph 20 above). It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether or not Turkish law afforded the applicants an enforceable right to compensation for the breaches of Article 5 in this case.

24. The Court observes that the remedy envisaged under Article 141 § 1 of the CCP fails to provide an enforceable right to compensation for the applicants' deprivation of liberty in breach of Article 5 § 4 of the Convention, as required by Article 5 § 5.

25. The Court concludes that there has been a violation of Article 5 § 5 of the Convention.

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

26. 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. They further complained under Article 13 of the Convention that there had been no effective remedy in domestic law whereby they could challenge the excessive length of the proceedings in dispute.

27. 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

28. 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

29. Each of the applicants claimed 3,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 for non-pecuniary damage.

30. The Government contested these claims.

31. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicants EUR 1,200 each in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicants also claimed 3,540 Turkish Liras (TRY), (approximately EUR 1,796) each for legal fees and TRY 400 (approximately EUR 203) each for costs and expenses. In support of their claims they submitted legal fee agreements.

33. The Government contested these claims.

34. 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 applicants EUR 500 each covering costs and expenses under all heads.

C. Default interest

35. 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 lack of a remedy to challenge the lawfulness of the applicants' pre-trial detention and lack of an enforceable right to compensation with respect to this complaint admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 5 §§ 4 and 5 of the Convention;
4. *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 at the date of settlement:
 - (i) EUR 1,200 each (one thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 500 each (five hundred euros) 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

APPENDIX

Application no.	Applicant	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	Objections to the pre-trial detention or continued pre-trial detention	Date of the release of the applicant where applicable	Total period of pre-trial detention and proceedings (on the basis of the information in the case file)	Grounds for continued detention (on the basis of the information in the case file)
1-30441/08	Erkan AYDOĞAN	20/11/2007	23/11/2007	27/03/2008	Pending before the Ankara Assize Court (E: 2008/133)	1. Lodged on: 29/11/2007 Dismissed on: 30/11/2007 2. Lodged on: 28/01/2007 Dismissed on 1/02/2008 3. Lodged on: 21/02/2008 Dismissed on: 28/02/2008	06/06/2008	6 months (pre-trial detention) 3 years (proceedings)	The applicants were released at the first hearing
2-35835/08	Selaattin DEMİR								
3-36481/08	Nurettin KILIÇDOĞAN								
4-36482/08	Halil KETEN								
5-36483/08	Binali GÜNEY								
6-36484/08	Hüseyin BABAYİĞİT								
7-36485/08	Atilla YILMAZ								