



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

SECOND SECTION

CASE OF KALAYLI v. TURKEY

(Application no. 43654/05)

JUDGMENT

STRASBOURG

11 October 2011

FINAL

11/01/2012

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

In the case of Kalaylı v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

David Thór Björgvinsson,

Dragoljub Popović,

Giorgio Malinverni,

Işıl Karakaş,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 43654/05) 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 Tevfik Kalaylı (“the applicant”), on 17 November 2005.

2. The applicant was represented by Mr C. Koç, a lawyer practising in Izmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 12 June 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 (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Izmir.

5. On 12 December 2003 the Izmir Magistrates’ Court issued an arrest warrant for the applicant on suspicion of assault and attempted murder.

6. On 18 December 2003 the Izmir Public Prosecutor filed a bill of indictment charging the applicant with the offences of assault and attempted murder.

7. On 6 October 2004 the applicant was arrested.

8. On 9 October 2004 the Antalya Magistrates' Court ordered the applicant's detention on remand.

9. On 1 December 2005 the Izmir Assize Court sentenced the applicant to six years and two months' imprisonment.

10. On 21 February 2007 the Izmir Assize Court ordered the applicant's release pending trial, having considered the time spent under detention on remand.

11. On 6 June 2007 the Court of Cassation upheld the judgment of 1 December 2005.

12. Between 12 October 2004 and 1 December 2005, the Izmir Assize Court examined the applicant's continued detention at the end of every hearing, either of its own motion or upon the applicant's requests. On each occasion, the court ordered the applicant's continued detention, having regard to the state of the evidence, nature of the offence, content of the file and the incomplete collection of evidence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. 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 ARTICLE 5 OF THE CONVENTION

14. The applicant complained under Article 5 §§ 1 (c) and 3 of the Convention that the length of his pre-trial detention had been excessive. The applicant contended under Article 6 § 2 that his right to be presumed innocent had been violated because he had been detained on remand for an excessive length of time.

15. He further complained under Article 5 § 4 of the Convention that his pre-trial detention had been unlawful. The applicant maintained under Articles 6 § 1 and 13 of the Convention that the first-instance courts used stereotyped wording while giving reasons for the continuation of his pre-trial detention.

16. The Court considers it appropriate to examine these complaints from the standpoint of Article 5 §§ 3 and 4.

A. Article 5 § 3 of the Convention

17. The Government maintained that the applicant's detention was based on the existence of reasonable grounds of suspicion of him 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.

18. The applicant contested these arguments.

19. The Court notes that the applicant's pre-trial detention lasted from 6 October 2004 to 1 December 2005, that is, approximately one year and two months.

20. The Court observes that, given the nature of the offence the applicant was charged with and the short period of pre-trial detention, 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. Article 5 § 4 of the Convention

21. The Government submitted that the applicant had in fact the possibility of challenging his 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.

22. The applicant maintained his allegations.

23. 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, *Koştı and Others v. Turkey*, no. 74321/01, § 19-24, 3 May 2007; *Elgay v. Turkey*, no. 18992/03, § 18-23, 20 January 2009; and *Yiğitdoğan v. Turkey*, no. 20827/08, §§ 28-31, 16 March 2010).

24. 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.

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

II. 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 claimed 6,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 non-pecuniary damage.

28. The Government contested these claims.

29. 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 applicant EUR 900 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant also claimed EUR 4,465.60 for legal fees and EUR 68.80 for costs and expenses. In support of his claims the applicant submitted the Izmir Bar's scale of minimum fees.

31. The Government contested these claims.

32. In respect of costs and expenses, 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 are reasonable as to quantum. In the present case, the applicant has not substantiated his contention that he actually incurred the costs claimed (*Güngil v. Turkey*, no. 28388/03, § 33, 10 March 2009). Accordingly, no award shall be made under this head.

C. Default interest

33. 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 complaint concerning the lack of a remedy to challenge the lawfulness of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *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, EUR 900 (nine hundred euros) in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable on the date of settlement and free of any taxes or charges that may be payable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points ;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President