



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

SECOND SECTION

CASE OF ÇATAL v. TURKEY

(Application no. 26808/08)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

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

In the case of Çatal v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 26808/08) 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 a Turkish national, Mr Hasan Çatal (“the applicant”), on 23 May 2008.

2. The applicant was represented by Mr A. Yılmaz and Mrs S. Nur Yılmaz, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 9 February 2010 the application was declared partly inadmissible and the complaints concerning the length of pre-trial detention and of the criminal proceedings and the lack of effective domestic remedies in those respects were communicated to the Government. Furthermore, by virtue of Article 29 § 1 of the Convention, the Court decided to rule on the admissibility and merits of the application at the same time.

4. The Government objected to the examination of the application by a Committee. Taking into account the issues raised in the application, the Court finds it appropriate to allocate the case to a Chamber.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Tokat.

6. On 27 March 1997 the applicant was arrested by police officers of the anti-terrorist branch of the Istanbul Security Forces on suspicion of membership of an illegal organisation and involvement in a bank robbery.

7. On 1 April 1997 the applicant was taken before the public prosecutor and the investigating judge, who placed him in pre-trial detention.

8. On 30 April 1997 the public prosecutor at the Istanbul State Security Court filed a bill of indictment, charging the applicant with attempting to overturn the constitutional system by force under Article 146 § 1 of the former Criminal Code.

9. Basing its decision on the evidence before it, on 19 December 2002 the Istanbul State Security Court convicted the applicant as charged and sentenced him to life imprisonment.

10. On 16 September 2003 the Court of Cassation quashed the judgment on procedural grounds and returned the case to the first-instance court.

11. Following the abolition of the State Security Courts by Law no. 5190, the criminal proceedings were transferred to the Istanbul Assize Court (2003/291 E.).

12. During the proceedings, the Istanbul Assize Court held hearings at two- or three-month intervals at which the lawfulness of the applicant's continued pre-trial detention was reviewed. At those hearings the applicant made his pleadings orally before the trial court and requested to be released pending trial. The Istanbul Assize Court rejected those requests several times in view of the reasonable grounds of suspicion established against the applicant, the nature of the criminal charges and the state of the evidence in the case file.

13. In between the hearings, the Istanbul Assize Court continued to scrutinise, by virtue of Article 108 of Law no. 5271, the necessity of applicant's continued pre-trial detention every thirty days on the basis of the case file, without holding an oral hearing.

14. At a hearing on 6 March 2008, the applicant was again brought before the trial court, where he claimed that his continued detention was unlawful and consequently requested to be released pending trial. This request was rejected by the Istanbul Assize Court on the basis of the reasonable grounds of suspicion that he had committed the offence with which he was charged, and the state of the evidence in the case file.

15. Following the applicant's objection against the above-mentioned decision, the 14th Division of the Istanbul Assize Court reviewed the lawfulness of the applicant's continued detention on the basis of the case file. On 4 April 2008 the court dismissed the objection lodged by the applicant based on the public prosecutor's written opinion, which had not been communicated to the applicant.

16. On 3 November 2009, having regard to the period he had spent in detention, the Istanbul Assize Court released the applicant on the condition that he did not leave the country.

17. According to the information in the case file, the proceedings are currently pending before the Istanbul Assize Court.

II. RELEVANT DOMESTIC LAW

18. The relevant section of the Turkish Code of Criminal Procedure (Law no. 5271) of 17 December 2004 reads as follows;

“Article 108 - Review of detention

(1) During the investigation phase, a review on whether a suspect’s continued detention is necessary or not shall be conducted by an investigating judge upon the public prosecutor’s motion within time limits not exceeding 30 days,

(2) Within the time limit mentioned in the foregoing paragraph, the suspect may also file a motion requesting the review of the lawfulness of his continued detention,

(3) During the trial phase, a judge or a court, on their own motion, shall review an accused person’s continued detention at each hearing or, if the conditions require, in between hearings, or within the time limits foreseen in the first paragraph of the Article.”

19. A description of the relevant domestic law and current practice under the new Code of Criminal Procedure is also outlined in *Altınok v. Turkey* (no. 31610/08, §§ 28-31, 29 November 2011).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Article 5 § 3 of the Convention

20. The applicant complained that the length of his pre-trial detention had been excessive and that the domestic courts had rejected his requests to be released on the basis of stereotypical grounds. He relied on Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

21. The Government contested the applicant’s argument.

22. The Court notes that this complaint is admissible, as no ground for declaring it inadmissible has been established.

23. As regards the merits of the complaint, the Government submitted that the applicant's detention had been based on the existence of reasonable grounds of suspicion that he had committed an offence, and that it had been reviewed periodically by the competent authority in accordance with the requirements laid down by the domestic law.

24. The Court observes that the applicant's pre-trial detention started on 27 March 1997 with his arrest and ended on 3 November 2009 with the Istanbul Assize Court's order for his release. After deducting the period when the applicant was detained after conviction in accordance with Article 5 § 1 (a) of the Convention (namely the period between 19 December 2002 and 16 September 2003) from the total time of the applicant's detention, the period that the applicant was held in pre-trial detention lasted for eleven years and eleven months (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, 16 January 2007).

25. 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.

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

B. Article 5 § 4 of the Convention

27. The applicant complained that there had been no effective remedy provided by the domestic legal system whereby he could effectively challenge his continued pre-trial detention.

28. The Court considers that the complaint should be examined under Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

29. The Government submitted that the applicant had had the opportunity under the domestic law to object to the decision extending his pre-trial detention.

30. In his observations submitted to the Court, the applicant contended that he had been denied adversarial proceedings in the review of his continued detention as no oral hearing had been held before the higher court

and the public prosecutor's written opinion against his release had not been notified to him or his lawyer.

31. The Court notes that these complaints are not inadmissible on any grounds and must therefore be declared admissible.

32. The Court reiterates that Article 5 § 4 entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009). In the context of the review of a detainee person's continued detention pursuant to Article 5 § 4 of the Convention, the proceedings must be adversarial and must ensure "equality of arms" between the parties, namely the prosecutor *vis-à-vis* the detained person (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Altınok*, cited above, § 45).

33. The first fundamental guarantee which flows naturally from Article 5 § 4 of the Convention is the right to an effective hearing by a judge in the review of the lawfulness of a detention. On the other hand, this provision equally guarantees an expeditious determination by the authorities of the necessity of a person's continued detention. Taking into account these two principles, the Court has held that Article 5 § 4 of the Convention does not require that a detained person be heard every time he lodges an appeal against a decision extending his detention but that it should be possible to exercise the right to be heard at reasonable intervals (see *Altınok*, cited above, § 54, and *Knebl v. the Czech Republic*, no. 20157/05, § 85, 28 October 2010).

34. The Court has recognised that the procedural guarantees of Article 5 § 4 of the Convention are respected in circumstances where a detained person was already present before the first-instance court which ruled on his request to be released but then did not appear again before the second-instance court in the appeal proceedings (see *Rahbar-Pagard v. Bulgaria*, nos. 45466/99 and 29903/02, § 67, 6 April 2006; *Depa v. Poland*, no. 62324/00, §§ 48-49, 12 December 2006; and *Saghinadze and Others v. Georgia*, no. 18768/05, § 150, 27 May 2010). The Court underlines that the principles of adversarial procedure and equality of arms were not violated in these three cases, either because neither of the parties had participated in the proceedings on appeal or because the presence of the detained person's lawyer was sufficient to satisfy these requirements.

35. In contrast, in cases where neither the detained person nor his lawyer had appeared on appeal but the public prosecutor had been present at the hearings, which is a different situation than the abovementioned, the Court

concluded that the principle of equality of arms was violated (see *Samoilă Cionca v. Romania*, no. 33065/03, § 74, 4 March 2008, and *Lapusan v. Romania*, no. 9723/03, § 53, 3 June 2008). Similarly, in a case where a defence lawyer had been ordered to leave the courtroom while the prosecutor remained and made further submissions in support of a detention order, the Court held that the principle of equality of arms had not been respected, despite an oral hearing having been held before the appeal court (see *Włoch v. Poland*, no. 27785/95, §§ 129-131, ECHR 2000-XI).

36. The Court notes that in the Turkish legal system the lawfulness of a detainee's continued detention is subject to automatic review by the trial court each time a hearing is held. In addition to this, the domestic courts must conduct a review on their own motion at least every thirty days in between hearings. Besides, a detained person may request to the trial court to be released at any time in the course of the proceedings, without having to wait a certain period of time. Furthermore, all decisions relating to pre-trial detention, whether they were taken following a request or automatically, can be challenged before a court.

37. Turning to the facts of the present case, the Court notes that neither of the parties, namely the public prosecutor or the detained applicant, was invited to make any oral submissions as regards the lawfulness of the applicant's continued detention in the proceedings before the appeal court. In that respect, the applicant was not put in a disadvantaged position *vis-à-vis* the prosecution and the principle of the equality of arms was not disregarded in relation to the appearance of parties in the appeal proceedings.

38. The Court next observes that during the domestic proceedings, the Istanbul Assize Court examined the lawfulness of the applicant's continued detention at the hearings held regularly at two- or three-month intervals, where the applicant had an opportunity to be heard by the trial court. In addition, by virtue of Article 108 of Law no. 5271, the Istanbul Assize Court reviewed the applicant's pre-trial detention every thirty days on its own motion, without holding any hearing.

39. The Court further observes that as with the other hearings, the applicant appeared before the first-instance court at the hearing on 6 March 2008, when he orally presented his arguments against his continued detention. Following the first-instance court's refusal, he lodged an objection against the interlocutory decision of 6 March 2008 requesting to be released pending trial. Subsequently, on 4 April 2008 the higher division of the Istanbul Assize Court dismissed the applicant's objection on the basis of the written documents of the parties and without holding an oral hearing.

40. Given the specific nature of the procedure under Article 5 § 4 of the Convention, involving the authorities' obligation to conduct a speedy review of the lawfulness of a person's continued detention, the Court reiterates that a requirement of a hearing in the examination of each

objection to a detention order might entail some paralysis of the criminal proceedings. Consequently, the procedural requirements inherent in this provision do not oblige the authorities to hold a hearing every time such an objection is lodged, unless there are special circumstances requiring a hearing (see *Altınok*, cited above, § 54).

41. In the present case, the applicant had been given an opportunity to make his oral submissions before the trial court at the hearing on 6 March 2008, which took place less than a month before his objection was examined by the appeal court. In these circumstances, the Court does not consider that a further oral hearing before the appeal court was required for the purposes of Article 5 § 4. The Court further notes that the applicant always had the opportunity to introduce a new objection against his continued detention at any time during a hearing before the trial court.

42. The Court thus finds that there has been no breach of Article 5 § 4 of the Convention in respect of the lack of an oral hearing in the appeal proceedings concerning his continued detention.

43. Conversely, the Court observes that, when considering the objection lodged by the applicant against the decision of 6 March 2008 extending his pre-trial detention, the higher division of the Assize Court obtained the prosecutor's written opinion, which stated that the applicant's detention should be continued. However, these observations were not communicated to the applicant or his lawyer and thus they were not given any opportunity to respond to them. Subsequently, the higher division of the Assize Court decided in accordance with the public prosecutor's opinion and dismissed the applicant's objection.

44. Under these circumstances, the Court considers that the applicant and his lawyer were denied an adversarial hearing as the domestic authorities failed to respect the principle of equality of arms in the appeal proceedings in which the applicant's continued detention was reviewed by the higher court. In this regard, the domestic authorities failed to ensure a fair and effective remedy by which the applicant could challenge the first-instance court's decision extending his pre-trial detention.

45. Accordingly, the Court finds a violation of Article 5 § 4 of the Convention in that respect.

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

46. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

47. The Government disputed the argument.

48. The Court notes at the outset that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

49. The Government argued 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 involved and the nature of the offence with which the applicant was charged.

50. The Court observes that the proceedings began on 27 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 first-instance court. They have thus already lasted almost fifteen years at two levels of jurisdiction.

51. Having examined all the material submitted to it, the Court considers that the length of the criminal proceedings has been excessive and failed to meet the “reasonable time” requirement (see *Daneshpayeh v. Turkey*, no. 21086/04, § 28, 16 July 2009).

52. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

53. The applicant lastly complained that there were no domestic remedies available under the Turkish law whereby he could challenge the length of the criminal proceedings in question. He relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority...”

54. The Government contested the argument, claiming that the applicant could have availed himself of the remedy provided under administrative law.

55. As the complaint under Article 6 § 1 has been declared admissible, this part of the application must also be declared admissible. The Court observes that in the Turkish legal system there is no remedy capable of accelerating proceedings. In this connection, the argument put forward by the Government that the applicant did not bring a complaint about the length of the proceedings before the administrative courts cannot be considered as concerning an “effective remedy” for the purposes of Article 13 (see *Daneshpayeh*, cited above, § 24, and *Tendik and Others v. Turkey*, no. 23188/02 § 36, 22 December 2005).

56. The Court therefore concludes that Turkish law does not provide an effective remedy whereby the applicant could have contested the length of the proceedings.

57. There has accordingly been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages and costs and expenses

58. The applicant claimed 88,905 euros (EUR) in respect of the pecuniary and non-pecuniary damage he allegedly sustained on account of lost earnings and his physical and mental suffering.

59. The Government contested these claims as unsubstantiated and excessive.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 15,500 in respect of non-pecuniary damage.

61. The applicant also claimed EUR 10,725 for legal fees and the costs and expenses incurred both before the domestic courts and the Court. In this connection, he submitted documentation demonstrating the work done by his legal representative during the proceedings, proof of payment for legal representation, as well as invoices in connection with postal, stationery and translation expenses.

62. The Government disputed these claims, asserting that private contracts or the tariff issued by the Bar Association should not have been taken as the basis for legal fees.

63. As regards the cost and expenses, the Court reiterates that an applicant is entitled to the reimbursement of those only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). In the present case, given the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs and expenses under all heads.

B. Default interest

64. The Court considers it appropriate that the default interest rate 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention;
3. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of the absence of an oral hearing in the review of the applicant's continued detention before the appeal court;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the non-communication to the applicant or his lawyer of the public prosecutor's opinion in the review of the applicant's continued detention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of criminal proceedings;
6. *Holds* that there has been a violation of Article 13 of the Convention in respect of the absence of a domestic remedy for the excessive length of proceedings;
7. *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 at the date of settlement:
 - (i) EUR 15,500 (fifteen thousand and five hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President