



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

THIRD SECTION

CASE OF FİLİZ AND KALKAN v. TURKEY

(Application no. 34481/97)

JUDGMENT

STRASBOURG

20 June 2002

FINAL

20/09/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Filiz and Kalkan v. Turkey,

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

Mr G. RESS, *President*,

Mr I. CABRAL BARRETO,

Mr L. CAFLISCH,

Mr B. ZUPANČIČ,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 May and 6 June 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 34481/97) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Melahat Filiz and Nadir Kalkan (“the applicants”), on 22 November 1996 .

2. The applicants were represented before the Court by Mr İşeri, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. Relying on Article 5 § 3 of the Convention the applicants complained that their detention in police custody lasted eight days without being brought before a judge or other officer authorised by law to exercise judicial power.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

6. On 14 November 2000 the Chamber retained the applicants' complaint under Article 5 § 3 of the Convention and declared the remainder of the application inadmissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 28 July 1996 police officers from the anti-terrorist branch of the İzmir Security Directorate arrested the applicants on suspicion of membership of an illegal organisation, the PRK-Rızgari.

10. On 5 August 1996 the İzmir State Security Court ordered the applicants' detention on remand.

11. On 28 August 1996 the Chief Public Prosecutor filed an indictment with the İzmir State Security Court charging the applicants with membership of the PRK-Rızgari and undertaking actions against the indivisible integrity of the state. The charges were brought under Articles 125 and 168 of the Criminal Code.

12. In a judgment dated 14 August 1997 the İzmir State Security Court acquitted Ms Melahat Filiz of the charges, holding that there was insufficient evidence to convict her. The court found Mr Nadir Kalkan guilty of the offences under Articles 125 and 168 and sentenced him to capital punishment.

13. On 19 September 1997 Mr Kalkan lodged an appeal with the Court of Cassation. The applicant did not submit any information concerning the outcome of the criminal proceedings against him.

II. RELEVANT DOMESTIC LAW

14. Article 19 of the Constitution provides:

“Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with the formalities and conditions prescribed by law:

...

The arrested or detained person must be brought before a judge within forty-eight hours at the latest or, in the case of offences committed by more than one person, within fifteen days ... These time-limits may be extended during a state of emergency...

...

A person deprived of his liberty for whatever reason shall have the right to take proceedings before a judicial authority which shall give a speedy ruling on his case and order his immediate release if it finds that the deprivation of liberty was unlawful.

Compensation must be paid by the State for damage sustained by persons who have been victims of treatment contrary to the above provisions, as the law shall provide.”

15. Article 168 of the Criminal Code provides:

“Any person who, with the intention of committing the offences defined in Articles ..., forms an armed gang or organisation or takes leadership ... or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years' imprisonment.

The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment.”

16. Article 125 of the Criminal Code provides:

“It shall be an offence, punishable by the death penalty, to commit any act aimed at subjecting the State or any part of the State to domination by a foreign State, diminishing the State's independence or removing part of the national territory from the State's control.”

17. Under Articles 3 and 4 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991), the offences defined in Articles 125 and 168 of the Criminal Code are classified as “terrorist” acts. Pursuant to Article 5 of Law no. 3713, penalties laid down in the Criminal Code as punishment for the offences defined in Articles 3 and 4 of the Act are increased by one half.

18. Under Article 9 of Law no. 3842 on procedure in the state security courts, only these courts can try cases involving the offences defined in Articles 125 and 168 of the Criminal Code.

19. At the material time, Article 30 of Law no. 3842 of 18 November 1992, amending the legislation on criminal procedure, provided that, with regard to offences within the jurisdiction of state security courts, any arrested person had to be brought before a judge within 48 hours at the latest, or, in the case of offences committed by more than one person, within 15 days.

THE LAW

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

20. The applicants complain of a breach of Article 5 § 3 of the Convention, which provides:

“ Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and 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 submit that the length of the applicants' detention in police custody was in accordance with domestic law in force at the time of the events. They point out that the custody periods were shortened by Law no. 4229 of 12 March 1997, which amended Law no. 3842. In this respect, they state that persons arrested for an offence that falls under the jurisdiction of state security courts must be brought before a judge within 48 hours at the latest. This period can be prolonged for up to four days by a written order of the public prosecutor owing to the difficulties in collecting evidence or to the number of perpetrators, or for similar causes. If the investigation is not concluded within this period, it can be prolonged for up to seven days upon the request of the public prosecutor and the decision of the judge.

22. The applicants contend in reply that the length of their detention in police custody was excessive. They maintain that despite the amendments made to Law no. 3842 they can still claim to be victims of a violation of Article 5 § 3.

23. The Court recalls that Article 5 in general, aims to protect the individual against arbitrary interference by the State with his right to liberty. Article 5 § 3 intends to avoid the arbitrariness and to secure the rule of law by requiring a judicial control of the interference by the executive (see the *Sakık and Others* judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997- VII, p. 2623, § 44).

24. The Court has accepted on several occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see the following judgments: *Brogan and Others v. the United Kingdom* judgment of 29 November 1998, Series A no. 145-B, p. 33, § 61; the *Murray v. the United Kingdom*, 28 October 1994, Series A no. 300-A, p. 27, § 58; *Aksoy v. Turkey*, 18 December 1996, *Reports* 1996-VI, p. 2282, § 78; *Sakık and Others v. Turkey*, 26 November 1997, *Reports* 1997-VII, p. 2623, § 44; and *Demir and Others v. Turkey*, 23 September 1998, *Reports*

1998-VI, p. 2653, § 41; *Dikme v Turkey*, no. 20869/92, 11 July 2000). This does not mean, however, that the investigating authorities have *carte blanche* under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved (see the above-mentioned *Murray* judgment, p. 27, § 58).

25. The Court notes that the applicant's detention in police custody lasted eight days. It recalls that in the *Brogan and Others* case it held that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict constraints as to the time laid down by Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism (see the above-mentioned *Brogan and Others* judgment, p. 33, § 62).

26. Even though the investigation of terrorist offences, as supposed in this case, presents the authorities with special problems, the Court cannot accept that it was necessary to detain the applicant for eight days without judicial intervention.

27. Therefore the Court concludes that there has been a breach of Article 5 § 3.

II. 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. The applicants each claimed the sum of GBP 400 for pecuniary and GBP 4,000 for non-pecuniary damage. They referred in this connection to their detention in police custody for eight days.

30. The Government did not make any comment on the applicant's claim.

31. The Court notes that the file does not substantiate the existence of pecuniary damage since the applicants did not give any particulars of their claims, as required by Rule 60 § 2 of the Rules of Court, although they were requested to do so (see, among other authorities, the *Motière v. France* judgment of 5 December 2000, no. 39615, § 26, ECHR 2000). It cannot therefore allow the claim under this head

32. The Court however considers that the applicants should be awarded compensation for non-pecuniary damage since they must have suffered a

certain amount of distress, considering that they were kept in police custody for eight days without any judicial intervention. Deciding on an equitable basis, as required by Article 41, it awards the applicants each the sum of EUR 2,200.

B. Costs and expenses

33. The applicants claimed GBP 5,000 for reimbursement of legal costs and expenses incurred.

34. The Government did not make any comment on this claim either.

35. The applicants clearly incurred some expenses in the Convention proceedings. The Court considers it reasonable to award the applicants jointly EUR 1,500 by way of reimbursement of their costs and expenses.

C. Default interest

36. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4,26 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
 - (i) EUR 2,200 (two thousand two hundred euros) to each applicant in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) to both applicants jointly in respect of costs and expenses plus any taxes that may be applicable;
 - (b) that simple interest at an annual rate of 4,26% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English and notified in writing on 20 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

GEORG RESS
President