



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

SECOND SECTION

CASE OF DEREÇİ v. TURKEY

(Application no. 77845/01)

JUDGMENT

STRASBOURG

24 May 2005

FINAL

24/08/2005

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 Dereci v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMEŖ,

Mr V. BUTKEVYCH,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 May 2005

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

PROCEDURE

1. The case originated in an application (no. 77845/01) 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 Abdullah Dereci (“the applicant”), on 22 November 2001.

2. The applicant was represented by Mr E. Kanar and Ms Y. Başara, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 29 April 2004 the Court declared the application partly inadmissible and decided to communicate the remaining complaints to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The applicant filed observations on the admissibility and merits (Rule 59 § 1). The Government submitted their observations outside the time-limit. They have therefore not been admitted to the case file.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950, and lives in Hatay.

7. On 10 February 1994 the applicant was arrested and placed in police custody by officers from the anti-terrorism branch of the Istanbul Security Directorate on suspicion of involvement in the activities of an illegal armed organisation, namely the TKEP/L (Turkey's Communist Labour Party/Leninist).

8. On 24 February 1994 the applicant was brought before the public prosecutor and then the investigating judge at the Istanbul State Security Court. The same day the investigating judge ordered the applicant's detention on remand.

9. In an indictment dated 17 May 1994, the public prosecutor initiated criminal proceedings against the applicant and eleven other defendants before the Istanbul State Security Court ("the court"), accusing them, *inter alia*, of membership of an illegal armed organisation and of involvement in activities that undermine the constitutional order of the State. The prosecution sought the death penalty under Article 146 § 1 of the Criminal Code.

10. By a letter of 24 February 1995, the court requested from the First and Second Divisions of the State Security Court that the two case files pending before them be transmitted to it for examination, as some of the defendants had been put on trial for similar charges before these courts.

11. On 22 May 1995 the court decided that the criminal proceedings pending before the Konya State Security Court should also be joined to the present case as the applicant was being prosecuted for similar charges before that court.

12. At the hearings of 27 July 1995, 8 March, 20 May, 19 July, 23 September and 20 November 1996, the court obtained testimonies from the complainants, who claimed to be the victims of the acts of the defendants and eye witnesses to the events.

13. On 27 January 1997 the court joined the case with that pending before the First Division of the Istanbul State Security Court. In the other case, the applicant was also accused of being a member of the same organisation and the activities in which he was allegedly involved were similar.

14. On 11 April 1997 the Court of Cassation set aside the decision to join the two criminal proceedings.

15. By a letter of 10 September 1997, the court requested that the case files pending before the Fifth and the Second Divisions of the State Security

Court be sent to it for examination, as the facts were allegedly the same as in the present case.

16. At the hearings of 19 November 1997 and 26 January 1998, the complainants of a robbery which had taken place in the Ağaoğlu and Aslantaş Commercial Centres were heard. The court noted that some of the witnesses had already made statements before the Seventh Division of the Istanbul Assize Court in relation to the incident at the Aslantaş Commercial Centre. Accordingly, it issued a letter to the Seventh Division of the Assize Court asking the latter to transfer the case file to it.

17. During the hearings held on 17 June and 5 August 1998, the court noted that the information requested from the Assize Court had not been received. It therefore repeated the earlier request.

18. On 7 October 1998 the Assize Court informed the State Security Court that it was unable to provide that information, as no defendant's name had been mentioned in the letter of request.

19. On 22 February 1999 the prosecutor submitted his observations on the case, in which he sought the applicant's conviction and sentence pursuant to Article 146 § 1 of the Criminal Code.

20. On 25 October 1999 the applicant read out his forty-page written observations and submitted them to the court. At the same hearing the applicant's lawyer requested an extension to prepare the defence.

21. At the hearing of 29 May 2000, the court decided to ask the Fourth Division of the Istanbul Assize Court about the outcome of criminal proceedings brought against the police by one of the co-accused, concerning an allegation of ill-treatment. By a letter dated 19 June 2000, the Assize Court stated that the case was still pending before the Court of Cassation.

22. In the course of the criminal proceedings the applicant made numerous requests for his release pending trial. The State Security Court dismissed these requests at each of the twenty-two hearings held between 17 August 1994 and 16 August 2000. In ordering the applicant's continued detention each time, it relied on "the nature of the offences charged, the state of evidence and the content of the case file".

23. In particular, during the hearing held on 20 November 2000, the applicant's lawyer reminded the court that his client had been kept in detention for six years and ten months, contrary to the provisions of domestic law as well as the Court's established case-law. On the same day, due to the change in the representation for the prosecution, the case file was deposited with the new prosecutor for the submission of his observations.

24. On 27 November 2000 the applicant's lawyer applied to the Fifth Division of the State Security Court, asking it to set aside the decision on the applicant's continuing detention. In his petition he stated that his client had been detained for a long period despite the absence of any danger that he would destroy the evidence, which had all been collected in the case file, or that he would abscond. The Fifth Division rejected the request on similar

grounds (paragraph 22 *in fine* above), namely “having regard to the content of the case file and the state of evidence”.

25. On 28 February 2001 the court noted an unrelated letter sent by the First Division of the Assize Court, when it realised that the latest letter concerning the prosecution of the police officers had been mistakenly addressed to the First Division instead of the Fourth.

26. On 4 June 2001 the applicant was released pending trial.

27. Of the eight hearings held between 22 October 2001 and 5 May 2003, five were adjourned at the request of the defence.

28. On 3 September 2003 the court noted that the Fourth Division of the Assize Court had sent the wrong judgment, instead of the one requested.

29. On 23 February 2004, due to a further change in the representation of the prosecution, the proceedings were postponed to 3 May 2004. Subsequently, the case file was deposited with the new public prosecutor for the submission of his observations on the case.

30. On 8 December 2004 the court decided to adjourn its deliberations on the judgment until after 1 April 2005, when the new Criminal Code was due to come into force, having regard to the fact that the latter’s provisions could affect the nature of the offence and the punishment to be imposed on the applicant.

II. RELEVANT DOMESTIC LAW

31. A full description of the domestic law may be found in the *Demirel v. Turkey* judgment (no. 39324/98, §§ 47-49, 28 April 2003).

THE LAW

32. The applicant complained that his detention on remand and the criminal proceedings brought against him exceeded the “reasonable time” requirements of Articles 5 § 3 and 6 § 1 of the Convention, which read in so far as relevant as follows:

Article 5 § 3

“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.”

Article 6 § 1

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

I. ADMISSIBILITY

33. The Court considers that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

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

34. The Court notes that the pre-trial detention of the applicant began on 10 February 1994 and ended on 4 June 2001. It thus lasted more than seven years and three months. The Istanbul State Security Court relied on “the nature of the offence, the state of the evidence and the content of the case file” when it rejected the applicant’s many requests for release pending trial.

35. The Court reiterates that it falls in the first place to the national judicial authorities to ensure that, in a given case, the detention of an accused person pending trial does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions on the applications for release. It is primarily on the basis of the reasons given in these decisions and of the established facts mentioned by the applicant in his appeals that the Court must determine whether or not there has been a violation of Article 5 § 3 of the Convention (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 154).

36. The persistence of reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the validity of the continued detention, but after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty (see, among other authorities, *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001, and *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

37. In the instant case, the State Security Court considered the applicant’s continued detention on thirty-five occasions, either on its own motion or upon the request of the applicant. In his last petition of this kind to the Fifth Division of the State Security Court, the applicant stated that he had been detained for a long time, that there was no danger that he would destroy the evidence, which had all been collected in the case file, or that he would abscond (paragraph 24 above).

38. The Court notes from the material in the case file that the State Security Court ordered the applicant's continued detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of evidence and the content of the file". Although, in general, the expression "the state of evidence" may be a relevant factor for the existence and persistence of serious indications of guilt, in the present case it nevertheless, alone, cannot justify the length of the detention of which the applicant complains (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A; *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, § 55, and *Demirel*, cited above, § 59).

39. In this context, the Court notes that the Fifth Division of the State Security Court failed to indicate to what extent the applicant's release would have posed a risk after, by then, well over six years of detention, in its decision to prolong the applicant's remand in custody (see *Demirel*, cited above, § 60).

40. In light of these considerations, the Court considers that the length of the applicant's pre-trial detention contravened Article 5 § 3 of the Convention.

41. Therefore, there has been a violation of this provision.

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

42. The applicant next complained that the criminal proceedings against him have not been concluded within a reasonable time.

43. The Court observes that these proceedings began on 10 February 1994, with the applicant's arrest, and are still pending before the first-instance court. They have thus already lasted nearly eleven years and three months.

44. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the one in the present application (see, for example, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Ertürk v. Turkey*, no. 15259/02, 12 April 2005).

45. 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 considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 32,292,000,000 Turkish Liras (TRL), equivalent to 23,933 euros (EUR) at the material time, in respect of pecuniary damage, and TRL 30,000,000,000 (EUR 22,235) in respect of non-pecuniary damage.

48. The Government disputed these claims.

49. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a global sum of EUR 9,000 for pecuniary and non-pecuniary damage.

B. Costs and expenses

50. By way of costs and expenses in relation to his representation, the applicant claimed TRL 225,000,000 (EUR 166) in respect of communication and translation costs, and TRL 10,000,000,000 (EUR 7,411) for legal expenses. He submitted that this amount included the visiting and travel expenses of his lawyer, as well as forty hours of work relating to the proceedings before the Court in preparing the application and the observations on admissibility and merits. He claimed that his representative had applied the scale recommended by the Istanbul Bar for applications to the Court.

51. The Government contested the applicant's claim under this head.

52. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant EUR 3,200 in respect of costs and expenses.

C. Default interest

53. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards the excessive length of the applicant's detention on remand;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the excessive length of proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, 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 Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros) in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 3,200 (three thousand two hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President