



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

SECOND SECTION

CASE OF HIYASETTİN ALTIN¹ v. TURKEY

(Application no. 73038/01)

JUDGMENT

This version was rectified on 6 September 2005
under Rule 81 of the Rules of the Court

STRASBOURG

24 May 2005

FINAL

24/08/2005

1. Rectified on 6 September 2005. The name of Hiyasettin Altın read Gıyasettin Altun in the former version of the judgment.

In the case of Hiyasettin Altın¹ 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 I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *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. 73038/01) 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 Hiyasettin Altın¹ (“the applicant”), on 26 July 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 31 March 2004 the Court decided to communicate the application. 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).

1. Rectified on 6 September 2005. The name of Hiyasettin Altın read Gıyasettin Altun in the former version of the judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in Muş.

7. On 11 May 1994 the applicant was arrested and placed in custody by officers from the anti-terrorism branch of the Istanbul Security Directorate on suspicion of his membership of an illegal organisation, namely the PKK (the Kurdistan Workers' Party).

8. On 19 May 1994 he 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 1 June 1994, the public prosecutor at the Istanbul State Security Court initiated criminal proceedings against the applicant and eleven others for being members of the PKK. The prosecutor requested that the applicant be sentenced pursuant to Article 168 § 2 of the Criminal Code and Section 5 of Law No. 3713 (the Anti-Terrorism Law).

10. On 29 May 1997 the applicant was convicted as charged by the Istanbul State Security Court and sentenced to twelve years and six months' imprisonment.

11. On 14 December 1998 the Court of Cassation quashed the applicant's conviction on the ground that the State Security Court had delivered its judgment without obtaining a final statement from the applicant, and thus had restricted the applicant's defence rights. The case was remitted to the Istanbul State Security Court for a further examination and the applicant remained in custody.

12. On 16 March 1999 the Istanbul State Security Court held its first hearing.

13. In the course of the criminal proceedings the applicant made numerous submissions for his release pending trial. He claimed that he was innocent and had been held in detention on remand for an excessive period, contrary to international norms. The court dismissed his request for release at each of the nine hearings held between 11 August 1994 and 28 November 1995 without indicating any reason. At each of the thirty-five hearings held between 1 February 1996 and 17 April 2001, it dismissed the request due to "the state of the evidence and the content of the case file".

14. In the meantime, the applicant's lawyer challenged his client's continued detention before another court. In his petition of 7 November 2000, he stated that his client had been detained for six years and six months, despite the absence of any danger that he would destroy the evidence, which had all been submitted to the case file, or that he would abscond. The court dismissed the request on similar grounds (paragraph 13

in fine above), namely “having regard to the nature of the offence, the state of the evidence and the content of the case file”.

15. The Istanbul State Security Court held twenty-eight more hearings before delivering its final judgment. At fifteen of them, where the court merely reviewed the applicant’s continued detention, the applicant was not present. For the others, the court fixed them at approximately two month intervals.

16. On 12 April 2001 the State Security Court adhered to its first judgment and convicted the applicant of the offence.

17. On 8 October 2001 the Court of Cassation upheld this judgment.

II. RELEVANT DOMESTIC LAW

18. 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

19. 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 insofar 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

A. As regards Article 5 § 3 of the Convention

20. The Court notes that there are two periods of pre-trial detention in the present case. The first period began on 11 May 1994 and ended on 29 May 1997, the date of the judgment of the State Security Court. From that point on, and until the Court of Cassation’s decision of 14 December 1998, the applicant was detained “after conviction by a

competent court”, which falls within the scope of Article 5 § 1 (a) of the Convention. However, the applicant lodged his application with the Court on 26 July 2001 which is more than six months from the end of the detention period complained of. Consequently this part of the complaint is introduced out of time and must be rejected for non-compliance with the six-month time-limit in accordance with Article 35 §§ 1 and 4 of the Convention.

21. The second period began on 14 December 1998 and ended on 8 October 2001. The Court notes that this part of the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this aspect is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. As regards Article 6 § 1 of the Convention

22. The Court notes that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this part of the application is not manifestly-ill founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

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

23. The Court notes that the period to be taken into account began on 14 December 1998 and ended on 8 October 2001. It thus lasted 2 years and 10 months. The Istanbul State Security Court relied on the “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, without having considered the possibility that he would destroy the evidence or that he would abscond.

24. 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 the 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).

25. 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).

26. In the instant case, the State Security Court considered the applicant's continued detention on twenty-eight occasions, either on its own motion or upon the request of the applicant. In his last petition of this kind, the applicant stated that he had been detained for a long time, and 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 14 above).

27. 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" at the end of most of the hearings, and on nine occasions without giving any reasons. 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).

28. The Court considers that the period of nearly 2 years and 10 months, given the stereotype reasoning of the courts, has not been shown to be justified, particularly, in the light of the prior period of three years on remand which the applicant had already undergone.

29. In these circumstances, the Court concludes that the length of the applicant's pre-trial detention contravened Article 5 § 3 of the Convention.

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

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

31. The applicant next complained that the criminal proceedings against him were not concluded within a reasonable time. The Court observes that the proceedings began on 11 May 1994, with the applicant's arrest, and ended on 8 October 2001 with the decision of the Court of Cassation, upholding the applicant's conviction. They therefore lasted nearly seven years and five months.

32. 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, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Ertürk v. Turkey*, no. 15259/02, 12 April 2005).

33. 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 regards 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.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage, and EUR 20,000 in respect of non-pecuniary damage.

37. The Government did not express any opinion on this matter.

38. Having regard to the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 5,000 for his non-pecuniary damages.

B. Costs and expenses

39. The applicant did not claim any separate amount in respect of the costs and expenses. He maintained that his costs and expenses during domestic proceedings and the proceedings before the Court are to be assessed together with pecuniary damage claim.

40. The Government did not address this issue.

41. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant the sum of EUR 1,000 in respect of cost and expenses.

C. Default interest

42. 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 application admissible as regards the length of the applicant's detention on remand after 14 December 1998, as well as the length of the criminal proceedings as a whole, and inadmissible as to the remainder;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards the complaint relating to the excessive length of detention on remand;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint relating to the length of the 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 5,000 (five thousand euros) in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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