



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

SECOND SECTION

CASE OF TAŞ v. TURKEY

(Application no. 21179/02)

JUDGMENT

STRASBOURG

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 25 April 2006*

20 September 2005

FINAL

20/12/2005

*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 Taş 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. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 21179/02) 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 Mr Sabri Taş.

2. The applicant was represented by Mr Mesut Beştaş and Ms Meral Beştaş, lawyers practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 8 July 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s detention on remand and the length of the criminal proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. The applicant and the Government each filed observations on the merits and admissibility (Rule 59 § 1).

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 1964 and lives in Batman.

7. On 7 February 1993 the applicant was taken into custody in Batman by police officers from the Batman Anti-Terrorist Branch and he was held in custody until 5 March 1993.

8. On 5 March 1993 the Batman Criminal Court ordered the applicant's remand in custody.

9. On 6 April 1993 and on 10 October 1994 the Public Prosecutor at the Diyarbakır State Security Court filed two different bills of indictment accusing the applicant of being a member of an illegal terrorist organization and undermining the integrity of the State.

10. On 5 May 1993 the State Security Court commenced the trial against the applicant and twenty-one other suspects, and prolonged the applicant's detention.

11. On 1 December 1995, the State Security Court convicted the applicant under Article 125 of the Criminal Code, and sentenced him to life imprisonment. The charges had been brought under Articles 168 and 125 of the Criminal Code.

12. Thereafter, the Court of cassation quashed the judgment three times, remitting it to the first-instance court, which reached the same conclusions as before:

- Court of Cassation decisions quashing the judgments on 9 July 1996, 31 January 2000 and 2 April 2001;
- the repetitive State Security Court decisions on 11 June 1999 (after numerous hearings), 28 September 2000 (after numerous hearings in the applicant's absence) and 31 January 2002 (also after numerous hearings).

13. On that latter date, the State Security Court convicted the applicant under Article 168/2 of the Criminal Code and sentenced him to twelve years and six months' imprisonment. He was released the same day.

14. The applicant did not appeal against this judgment. On 7 February 2002 it became final.

II. RELEVANT DOMESTIC LAW

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

THE LAW

16. 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

17. The Court notes that there were four periods of pre-trial detention in the present case, three of which were as follows:

- from 7 February 1993 to 1 December 1995 when the State Security Court gave its first judgment on the case;
- from 9 July 1996 to 11 June 1999; and
- from 31 January 2000 to 28 September 2000 with the final decision of the State Security Court.

18. Following these periods until the Court of Cassation’s decisions of 9 July 1996, 31 January 2000 and 2 April 2001 respectively, 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 15 May 2002 which is more than six months after the last mentioned detention period. Consequently this part of the complaint has been introduced out of time and must be rejected for non-compliance with the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

19. The fourth and final detention period began on 2 April 2001 and ended on 31 January 2002. 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.

20. For the same reasons, the applicant’s complaint under Article 6 § 1 of the Convention is admissible.

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

21. The Court notes that the period to be taken into account began on 2 April 2001 and ended on 31 January 2002. It thus lasted nearly ten months. The Diyarbakır 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.

22. 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).

23. 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).

24. 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.

25. The Court notes from the material in the case file that the State Security Court ordered the applicant’s continued detention 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).

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

27. The Court considers that the period of nearly ten months, given the stereotype reasoning of the domestic court, has not been shown to be justified, particularly, in the light of the prior period of nearly five years on remand which the applicant had already undergone.

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

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

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

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

31. The Court observes that these proceedings began on 7 February 1993, with the applicant's arrest, and ended on 31 January 2001. They have thus lasted nearly eight years.

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, 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).

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 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

34. 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."

35. On 8 July 2004 the applicant was requested to submit his claims for just satisfaction. He did not submit any such claims within the specified time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible as regards the length of the applicant's detention on remand after 2 April 2001, 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 excessive length of proceedings.

Done in English, and notified in writing on 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President