



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

THIRD SECTION

CASE OF KARAGÖZ v. TURKEY

(Application no. 5701/02)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

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 Karagöz v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 5701/02) 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 a Turkish national, Mrs Gönül Karagöz, on 25 December 2001.

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

3. The applicant alleged that the period of her detention in police custody and her detention on remand exceeded the reasonable time requirement of the Convention. She further complained that the criminal proceedings brought against her were unreasonably lengthy.

4. On 27 May 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of detention on remand and the criminal proceedings to the Government.

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

6. On 24 March 2005, under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

8. The applicant was born in 1974 and lives in Istanbul.

9. On 22 February 1997 the applicant was arrested by police officers from the anti-terrorist branch of the Istanbul Security Directorate and was placed in custody on suspicion of membership of an illegal armed organisation, namely the MLKP (Marxist Leninist Communist Party).

10. On 6 March 1997 the applicant was brought before the investigating judge at the Istanbul State Security Court (“the State Security Court”). Subsequently, the investigating judge ordered the applicant's detention on remand.

11. On 10 March 1997 the applicant challenged her detention on remand with the State Security Court. In the petition, the applicant stated that her address was known, and that there was no danger of her absconding or destroying the evidence. The State Security Court rejected her objections, upholding the previous order of detention on remand.

12. On 18 March 1997, the public prosecutor at the Istanbul State Security Court filed an indictment with the same court against 23 persons including the applicant, *inter alia*, accusing her of being a member of the MLKP and having explosives in her possession. The public prosecutor requested that the applicant be punished pursuant to Articles 168 § 1 and 264 § 5 of the Criminal Code and Article 5 of Law No. 3713 (Anti-Terrorism Law).

13. On 1 April 1997 the State Security Court commenced the trial against the applicant and prolonged her detention on remand having regard to the nature of the offences of which she was accused.

14. On 8 October 1997 the court took a statement from the applicant, who denied all the charges against her. The applicant also repudiated the veracity of her police statement, alleging that it was made under duress. At the same hearing, the court ordered the applicant's continued detention having regard to “the nature of the offence, the content of the case-file, and the non-completion of the evidence”.

15. At the hearing of 3 December 1997 the court heard three witnesses called by a co-accused of the applicant. Hand-written documents were shown to the applicant. The applicant accepted that these belonged to her, concerning notes taken from books. At the same hearing, the court accepted the intervention of the owner of a car which had been used during a robbery as the intervening complainant. The court further decided to ask the Istanbul 7th Assize Court about the outcome of criminal proceedings brought against the police officers that had conducted the preliminary investigation into the applicant and her co-accused. At the end of the hearing, the court rejected the applicant's request for release pending trial because of “the nature of the offence, the state of the evidence and the duration of the detention”.

16. On 11 February 1998 the court decided to separate two of the applicant's co-accused's cases from the case-file and join them to other cases pending before other divisions of the Istanbul State Security Court. At the end of the hearing, the court ordered the applicant's continued detention having regard to "the nature of the offence, the state of the evidence, and the duration of detention".

17. At the hearing of 29 May 1998, the court showed the applicant photographs taken during the Mayday demonstration of 1 May 1996 by the police. The applicant accepted that she had participated in the demonstration and was in the photographs. At the same hearing the court rejected the applicant's request for release pending trial on the grounds previously stated.

18. On 31 July 1998 the prosecution submitted their observations on the merits of the case, requesting that the applicant be punished for being a member of the MLKP. The court fixed fifteen days for the defence to submit their observations. At the end of the hearing it prolonged the applicant's detention on remand on the grounds of "the nature of the offence, the state of the evidence, and that the case was due to be decided upon".

19. The applicant did not attend the hearing of 30 September and 27 November 1998 of her own free will. The court issued a summons to the applicant in order that she submit her defence either in writing or in person at the subsequent hearings. It further decided to prolong the applicant's detention on remand due to "the nature of the offence, the state of evidence and the duration of detention".

20. At the hearings of 17 February and 9 July 1999 the court noted that the information requested from Istanbul 7th Assize Court had not been sent. Accordingly, it repeated the earlier request. It further prolonged the applicant detention on the same grounds, namely "having regard to the nature of the offence, the state of the evidence and the duration of detention".

21. At the hearings of 22 September and 1 December 1999 the court noted letters sent by the Istanbul 7th Assize Court, informing the trial court that the criminal proceedings brought against the police officers were still pending. The court issued letters to the Istanbul 7th Assize Court asking for new information concerning the outcome of the proceedings and requesting that a copy of the judgment be sent once delivered.

22. On 11 February 2000 the applicant's lawyer referred to the case-law of the Court and requested that the applicant be released pending trial. This was rejected.

23. On 21 April 2000 the court decided to re-issue the letter to the Istanbul 7th Assize Court.

24. On 21 June 2000, the applicant's lawyer reminded the court that his client had been kept in detention for forty months, contrary to the Court's established case-law. The court decided to prolong the applicant's detention

relying on “the nature of the offence, the state of the evidence and the duration of detention”.

25. At the hearing of 18 April 2001 the court, with the dissenting opinion of a member of the panel, decided to prolong the applicant's detention on remand. The dissenting opinion read as follows:

“I oppose the respectable majority's opinion which prolonged the duration of the detention, as the evidence against the defendants has all been collected in the case file, therefore there exists no danger of destroying it and that the duration of the detention which the defendants have already undergone is lengthy enough.”

26. On 29 June 2001 the court decided to release the applicant due to ill-health.

27. On 16 October 2002 the applicant was convicted of being a member of an illegal armed organisation and was sentenced to twelve years and six months' imprisonment.

28. The applicant appealed against this judgment.

29. On 15 January 2004 the Court of Cassation quashed the applicant's conviction on the ground that the State Security Court had delivered its judgment without awaiting and considering the outcome of the criminal proceedings before the Istanbul 7th Assize Court, concerning the police officers who conducted the preliminary investigation into the applicant and her co-defendants. The case-file was remitted to the Istanbul State Security Court for further examination.

30. On 17 March 2004 the Istanbul State Security Court resumed the trial against the applicant. It consequently repeated its request to the Istanbul 7th Assize Court.

31. Following the abolition of the Istanbul State Security Court, the case was transferred to the Istanbul 11th Assize Court, where it is still pending.

THE LAW

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

32. The applicant complained that his detention on remand exceeded the “reasonable time” requirement as provided in Article 5 § 3 of the Convention, which reads insofar as relevant 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.”

33. The Government contested that argument.

A. Admissibility

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The Government submitted that the State Security Court did not unduly prolong the applicant's detention on remand. The offence which the applicant was charged with was of a serious nature, and her detention on remand was also necessary to prevent her from committing any further offences or from fleeing after having done so. The State Security Court took into consideration the very high risk of the applicant escaping or removing evidence or traces, and that there has been a genuine public interest for the continued detention of the applicant, since the offence attributed to her was of a serious nature.

36. The applicant maintained that the Istanbul State Security Court relied on the “nature of the offence, the state of the evidence and the duration of the detention” when it rejected her many requests for release pending trial, without having discussed the possibility of her destroying evidence or absconding.

37. 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).

38. 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).

39. The Court noted that, in the instant case, the period to be taken into consideration began on 22 February 1997 and ended on 29 June 2001, when the applicant was released. It thus lasted more than 4 years and 4 months. During this period, the Istanbul State Security Court prolonged the applicant's detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of evidence and the duration of detention". On one occasion it also mentioned that the case was due to be decided upon (paragraph 18 above).

40. The Court takes note of the seriousness of the offence attributed to the applicant and the severity of the relevant punishment. However, it recalls that the danger of absconding cannot solely be assessed on the basis of the severity of the sentenced risked, but must be analysed with reference to a number of other relevant additional elements, which may either confirm the existence of such a danger or make it appear so slight that it cannot justify detention pending trial (see *Muller v. France*, judgment of 17 March 1997, Reports 1997 II, § 43; *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 43). In this regard, the Court notes the lack of such sufficient reasoning in the domestic court's decisions to prolong the applicant's remand in custody.

41. As for the reason that the case was at the stage of judgment, the Court notes that, it has been more than six years since the domestic court pronounced this reasoning and the criminal proceedings against the applicant are still pending before the first level of jurisdiction (paragraph 31 above).

42. Finally, 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*, cited above; *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 v. Turkey*, no. 39324/98, § 59, 28 January 2003).

43. The foregoing considerations are sufficient to enable the Court to conclude that the length of the applicant's pre-trial detention, which lasted over 4 years and 4 months, given the stereotype reasoning of the court, has not been shown to be justified.

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

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

44. The applicant next complained that the criminal proceedings against her have not been concluded within a reasonable time, as required by Article 6 § 1 of the Convention, which reads insofar as relevant as follows:

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

45. The Government contested that argument.

A. Admissibility

46. The Court considers 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.

B. Merits

47. The Government contended that the length of the case was not prolonged unnecessarily because of the negligence of the judicial authorities. The case was complex, considering the number of co-accused of the applicant, the difficulties in collecting evidence, and the notification process contributed to the prolongation of the applicant's trial.

48. The applicant maintained her allegation.

49. The Court observes that the criminal proceedings against the applicant began on 22 February 1997, with the applicant's arrest, and are still pending before the first-instance court. They have thus already lasted more than 8 years.

50. The Court reiterates that, it 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 *Dereci v. Turkey*, no. 77845/01, 24 May 2005).

51. 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 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 100,000 new Turkish liras (YTL) in respect of pecuniary and YTL 50,000 of non-pecuniary damage.

54. The Government disputed these claims.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim for pecuniary damage. On the other hand, it awards the applicant 7,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed YTL 500 in respect of communication and translation costs, and YTL 25,500 for legal expenses incurred in the domestic proceedings and before the Court. She submitted that the latter amount included the visiting and travel expenses of his lawyer, as well as thirty-five hours of work relating to the proceedings before the Court in preparing the application and the observations on admissibility and merits. She claimed that her representative had applied the scale recommended by the Istanbul Bar for applications to the Court.

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

58. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Sawicka v. Poland*, no.37645/97, § 54, 1 October 2002). In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs and expenses.

C. Default interest

59. 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;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 new Turkish liras at the rate applicable at the date of the settlement:
 - (i) EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five 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 amount[s] 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 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President