



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

THIRD SECTION

CASE OF FATMA TUNÇ v. TURKEY

(Application no. 16608/02)

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 Fatma Tunç 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. TÜRMESEN,

Mr C. BÎRSAN,

Mrs M. TSATSAS-NIKOLOVSKA,

Ms R. JAEGER, *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. 16608/02) 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, Ms Fatma Tunç, on 29 March 2002.

2. The applicant was represented by Mrs F. Karakaş, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 2 September 2004 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaints concerning the length of the applicant's police custody, her right to an effective remedy by which she could challenge the lawfulness of her detention, and to receive compensation for the excessive length of the custody period 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. 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).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980. She is imprisoned in Gebze Prison.

7. On 10 October 2001 the applicant was at a bus stop in İçerenköy in Istanbul when she was arrested by plain-clothes police officers on suspicion of being a member of the PKK. She was taken to the Anti-Terrorism Branch of the Istanbul State Security Directorate. On the same day, the police officers drafted an arrest protocol stating that the applicant had been arrested on account of her involvement in PKK-related activities. The applicant signed this protocol.

8. The applicant's lawyer challenged the arrest before the investigating judge of the Istanbul State Security Court and requested that the applicant be released from detention. Her request was dismissed.

9. On 11 October 2001 the public prosecutor at the Istanbul State Security Court extended the detention period until 14 October 2001.

10. On 14 October 2001 the applicant could see her lawyer for a short period of time following the permission of the public prosecutor.

11. On 15 October 2001 police officers from the Anti-Terrorism Branch requested that the applicant's custody period be extended for three more days. The single judge of the Istanbul State Security Court granted the request and extended the custody period until 17 October 2001 pursuant to Article 128 of the Code of Criminal Procedure. The applicant's lawyer challenged this decision before a panel of three judges of the Istanbul State Security Court and requested that the applicant be brought before a judge. Her request was dismissed.

12. On 16 October 2001 the applicant was brought before the public prosecutor, and thereafter before the investigating judge of the Istanbul State Security Court. Subsequently the judge ordered that the applicant be detained on remand.

13. On 23 November 2001 the public prosecutor filed an indictment with the Istanbul State Security Court, accusing the applicant of being a member of an illegal armed organisation under Article 168 § 2 of the Criminal Code and Article 5 of the Anti-Terrorism Act.

14. The Istanbul State Security Court convicted the applicant of the offence and sentenced her to twelve years and six months' imprisonment. The judgment was later upheld by the Court of Cassation on 11 November 2004.

II. RELEVANT DOMESTIC LAW

15. A description of the relevant domestic law can be found in *Öcalan v. Turkey* ([GC], no. 46221/99, 12 May 2005) and *Sakık and Others v. Turkey* (26 November 1997, *Reports of Judgments and Decisions* 1997-VII).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 3, 4 AND 5 OF THE CONVENTION

16. The applicant complained of violations of Article 5 §§ 3, 4 and 5 of the Convention, which read insofar as relevant as follows:

“3. 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.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

17. 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.

B. Merits

1. Article 5 § 3

18. The applicant complained under Article 5 § 3 of the Convention that she had been kept in police custody for six days without being brought before a judge or other officer authorised by law to exercise judicial power.

19. The Government maintained that the applicant's custody period was in absolute conformity with the domestic legislation in force at the time of the incident.

20. The Court has already accepted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 33-34, § 61; *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 58; *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2653, § 41). This does not mean, however, that the authorities have *carte blanche* under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, ultimately, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence (see, among others, *Murray*, cited above, § 58).

21. The Court notes that the applicant's detention in police custody lasted six days. It reiterates 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 (*Brogan and Others*, cited above, § 62).

22. Even supposing that the activities of which the applicant stood accused were linked to a terrorist threat, the Court cannot accept that it was necessary to detain her for six days without judicial intervention.

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

2. Article 5 § 4

24. The applicant alleged that there were no remedies in domestic law to challenge the lawfulness of her detention in police custody. She invoked Article 5 § 4 of the Convention.

25. The Government contended that Article 128 of the Code of Criminal Procedure provides an effective remedy to challenge the lawfulness of the detention. They maintained that, although in the instant case, the applicant's appeal in this respect was not successful (paragraph 11 above), this decision does not mean that the remedy, provided by the Code of Criminal

Procedure, is ineffective. Accordingly, the applicant's allegation that she did not have an effective remedy is baseless.

26. Having regard to the conclusion reached with regard to Article 5 § 3 (see paragraphs 20 and 21 above) the Court considers that the period in question (six days) sits ill with the notion of “speedily” under Article 5 § 4 of the Convention (see *Igdeli v. Turkey*, no. 29296/95, §§ 34 and 35, 20 June 2002; *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 29, § 53).

27. The Court reiterates that in several cases raising similar questions to the present case, it rejected the Government's submission to that effect and found violations of Article 5 § 4 (see, among others, *Öcalan*, and, *Sakık and Others*, cited above). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned cases.

28. In conclusion, there has been a breach of Article 5 § 4 of the Convention.

3. Article 5 § 5

29. The applicant complained under Article 5 § 5 of the Convention that she had no right to compensation for the alleged violations of Article 5 of the Convention.

30. The Government submitted that, in cases of illegal detention, a request for compensation could be submitted within three months following the final decision of the trial court under the terms of Law no. 466 on compensation payable to persons unlawfully arrested or detained.

31. The Court notes that an action for compensation under Law no. 466 could only be brought for damage suffered as a result of unlawful deprivation of liberty. It observes that the applicant's detention in police custody was in conformity with the domestic law. Consequently, she did not have a right to compensation under the provisions of Law no. 466 (see *Sakık and Others*, cited above, § 60).

32. The Court therefore concludes that there has been a violation of Article 5 § 5 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 9,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

35. The Government contended that the amount claimed was excessive.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered non-pecuniary damage such as distress resulting from her detention for six days without the opportunity to challenge its lawfulness, which cannot be sufficiently compensated by the finding of a violation. Having regard to its case-law, and making its assessment on equitable basis, the Court the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

37. The applicant claimed the sum of EUR 6,000 for the legal expenses incurred before the domestic courts and the Court. She further claimed EUR 3,000 for translation, post, photocopy and telephone costs.

38. The Government submitted that these claims were unsubstantiated. They argued that no documents had been provided by the applicant to prove her claims.

39. 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 that the claims made in respect of administrative costs maybe regarded as necessarily incurred and it is reasonable to award the sum of EUR 1,500 under this head.

C. Default interest

40. 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 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
5. *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, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, and EUR 1,500 (one thousand five hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (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;
6. *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