



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

SECOND SECTION

CASE OF DAŞ v. TURKEY

(Application no. 74411/01)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Daş 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,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 18 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 74411/01) 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 Ali Daş (“the applicant”), on 28 July 2001.

2. The applicant was represented by Mr S. Çetinkaya, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 24 April 2003 the Court decided to communicate the application to the Government.

4. 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).

5. In a letter of 1 March 2005, the Court informed the parties that in accordance with Article 29 §§ 1 and 3 of the Convention it would decide on both the admissibility and merits of the application.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1953 and was serving a sentence in Nazilli prison at the time of lodging his application.

8. On 5 January and 30 June 1994, and on 11 July 1995, the public prosecutor at the İzmir State Security Court issued arrest warrants in respect of the applicant on suspicion of his involvement with the PKK¹.

9. On 23 May 2001 the applicant was arrested and taken into custody by police officers at the Diyarbakır Security Directorate. According to the arrest protocol, signed by a police officer and the applicant, the latter was arrested at 18.00 p.m. and was told of his rights, in particular, the right to object to the prolongation of his arrest and detention to a judge.

10. On an unspecified date², the applicant's wife filed a petition with the Diyarbakır public prosecutor's office and requested information as to where her husband was being held and when he would be brought before the public prosecutor. She submitted that her husband was arrested on 23 May 2001 at around 15.00 p.m. On 24 May 2001 the public prosecutor informed the applicant's wife that her husband was held in custody on account of his involvement with the PKK.

11. The Government submitted that the applicant was taken for a medical examination at Diyarbakır State Hospital on the day of his arrest and on 24 and 25 May 2001. They maintained that on 24 May 2001 the İzmir Security Directorate requested the transfer of the applicant from Diyarbakır to İzmir and that the applicant arrived, accompanied by a police officer from the Diyarbakır State Security Directorate, by plane, in İzmir on 25 May 2001 at 14.30 p.m.

12. On 25 May 2001 the applicant was handed over to the police officers at the İzmir Security Directorate. On the same day, the public prosecutor at the İzmir State Security Court authorised the extension of the applicant's detention until 28 May 2001.

13. On the same day, the applicant was examined by a doctor at the Atatürk Hospital at 14.50 p.m.

14. On 26 May 2001 the applicant was requested to identify other suspects that he had mentioned in his statements, by looking at photographs in the archives. The identification report signed by the applicant and four police officers indicated that the applicant had previously been interrogated and that he was illiterate. On 27 May 2001 the applicant's statement was

1. The Kurdistan Workers' Party

2. The petition is dated 17 May 2001. In view of the contents of the petition, the Court considers the date to be the result of a clerical error.

taken by two police officers at the Anti-Terror Branch of the İzmir Security Directorate.

15. On 28 May 2001 the applicant was examined by a doctor at the Atatürk Hospital at 13.05 p.m.

16. On the same day the applicant was brought before the public prosecutor at the İzmir State Security Court and before the İzmir State Security Court. The latter remanded him in custody since it considered that there was a risk of him escaping.

17. On 9 May 2002 the applicant was convicted of being a member of a terrorist organisation (Article 168 § 2 of the Criminal Code) and sentenced to twelve years and six months' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The fourth paragraph of Article 128 of the Code of Criminal Procedure (as amended by Law no. 3842/9 of 18 November 1992) provides that any person who has been arrested, and/or in respect of whom a prosecutor has made an order for his or her continued detention, may challenge that measure before the appropriate district judge and, if successful, be released. Following amendments on 6 March 1997, the aforementioned article became applicable to the proceedings before the State Security Courts.

THE LAW

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

19. The applicant alleged that he had not been brought promptly before a judge, contrary to Article 5 § 3 of the Convention, which provides as follows:

“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.”

A. Admissibility

20. The Government asked the Court to dismiss the complaint as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. The Government argued that the applicant could have, pursuant to Article 128 of the Code of

Criminal Procedure, challenged the length of his detention in police custody. They maintained that the applicant could also have sought compensation pursuant to Law no. 466 pertaining to the payment of compensation to persons unlawfully arrested or detained.

21. The Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Öcalan v. Turkey* [GC], no. 46221/99, §§ 66-71, ECHR 2005-...). The Court finds no particular circumstances in the instance case, which would require it to depart from its findings in the above-mentioned application.

22. In view of the above, the Court rejects the Government's preliminary objection.

23. The Court notes that the application 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

24. The Government submitted that, at the material time, detention in police custody for offences within the jurisdiction of the State Security Courts was limited to four days, but that, upon the request of a prosecutor and with the approval of a judge, this period could be extended for up to seven days. They maintained that the applicant's period of detention started on 23 May 2001 at 6 p.m. and continued until 25 May 2001. He was then handed over to the police officers at the İzmir Security Directorate around 2.30 p.m. The Government argued that the applicant was held in detention for a period of four days and nineteen hours and that the transfer of the applicant to İzmir was necessary and could not be avoided. The Government opined that, having regard to the serious allegations against the applicant, an extension of two days was not unreasonable. They pointed out that the applicant's detention ended in the afternoon of 28 May 2001. The Government referred to the Court's case-law, in particular, to *Karakurt v. Turkey* ((dec.), no. 45718/99, 29 January 2002).

25. The applicant claimed that he had been arrested on 23 May 2001 at 3 p.m. He submitted that the accusations against him concerned events which took place between 1993 and 1995 and that the case against him was already complete except for his statements. He further submitted that he was interrogated on 27 May 2003, prior to his identification of other suspects, and not on 28 May 2003. He maintained that there had been no need to keep him in police custody for more than three days. Finally, the applicant stated that, in practice, the time spent for transfers and travel were not counted as part of the period of detention, and reiterated that he was held in detention for five days without being brought before a judge.

26. The Court notes that it has found violations of Article 5 § 3 in respect of persons held in police custody on suspicion of terrorist offences for up to, and more than, four days and six hours (see for example, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 31-32, §§ 55-62; *Dikme v. Turkey*, no. 20869/92, §§ 60-67, ECHR 2000-VIII).

27. In the instant case, the applicant was so detained before being brought before a judge for approximately four days and twenty hours (from 23 May 2001 at around 3 or 6 p.m., until 28 May 2001 at around 2 p.m.). The Court finds no justification in the limited measures taken by the police in the present case – taking the applicant’s statement, transferring him to İzmir and having him identify other suspects via photographs – for failing to bring him earlier before a judge.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested this amount.

32. Having regard to its case law, and making its assessment on an equitable basis, the Court awards the applicant EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed EUR 3,000 for the costs and expenses incurred both before the domestic courts and the Strasbourg Court. He did not provide any receipts in respect of this claim.

34. The Government contested this amount.

35. Having regard to the information in its possession, the Court rejects the applicant’s claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

36. 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;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *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 sums, to be converted into the currency of the respondent State at the rate applicable on the date of payment:
 - (i) EUR 500 (five hundred euros) in respect of non-pecuniary damage and
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses,
 - (iii) plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President