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

THIRD SECTION

CASE OF BULDUŞ v. TURKEY

(Application no. 64741/01)

JUDGMENT

STRASBOURG

22 December 2005

FINAL

22/03/2006

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 Bulduş 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. TÜRMEN,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Mrs R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 64741/01) 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 Mr Mahmut Bulduş on 11 September 2000.

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 1 June 2004 the Court (Second Section) declared the application partly inadmissible and decided to communicate the complaint concerning the applicant’s detention in police custody for ten days without being brought before a judge to the Government. Under 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 and admissibility (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1964 and is currently detained in Midyat prison.

7. On 21 March 2000 the applicant was arrested in Şırnak by members of the anti-terrorist branch of the Şırnak Security Directorate on suspicion of membership of the PKK (Kurdish Workers' Party).

8. In a letter dated 22 March 2000 the Şırnak Security Directorate requested the Şırnak Public Prosecutor to extend the applicant's detention period until 25 March 2000 together with eight others. On the same day, considering the number of the accused and the difficulty to obtain evidence, the public prosecutor authorised to extend the detention period as requested.

9. On 24 March 2000 the Şırnak Criminal Court of First Instance ordered the prolongation of the applicant's custody for another six days on the ground that the interrogation process had not yet been completed.

10. On 31 March 2000 the applicant was brought before the public prosecutor. On the same day the Diyarbakır Criminal Court of First Instance ordered that the applicant be detained on remand.

6. On 20 April 2000 the Public Prosecutor before the Diyarbakır State Security Court filed a bill of indictment charging the applicant under Article 125 of the Criminal Code with assisting and abetting and membership of a terrorist organisation.

7. The criminal proceedings against the applicant are currently pending before the Diyarbakır Assize Court.

II. RELEVANT DOMESTIC LAW

8. A full description of the domestic law may be found in the *Öcalan v. Turkey* [GC] judgment (application no. 46221/99, § 55, CEDH 2005).

THE LAW

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

9. The applicant complained that he was held in police custody for ten days without being brought before a judge or other officer authorised by law to exercise judicial power as provided in Article 5 § 3 of the Convention, which reads 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."

A. Admissibility

10. The Government submitted that the applicant has failed to exhaust domestic remedies as he neither raised his complaints in substance nor claimed the violation of the Convention before the domestic courts which are always in a position to examine such claims. They referred to Article 128 § 4 of the Code of Criminal Procedure, that was applicable at the time of the applicant's arrest, pursuant to which the detainees are entitled to apply to the district judge to challenge the lawfulness of their detention or the public prosecutor's order prolonging their period of police custody. The Government further submitted that the district judge is entitled to terminate the applicant's detention in police custody and order his immediate appearance before the public prosecutor. They finally maintained that after the amendments of 6 March 1997, the procedure foreseen by the fourth paragraph of this article became applicable to the charges to be adjudicated before the State Security Courts as well.

11. The applicant claimed that the remedy suggested by the Government was ineffective in his case. He submitted that as his length of custody would appear to be in conformity with domestic law applicable at the time of his arrest, any application under Article 128 of the Code of Criminal Procedure would have been useless.

12. In the present case, the Court reiterates that there was "no example of any person detained in police custody having successfully applied to a judge for a ruling on the lawfulness of his detention or for his release" in proceedings before the State Security Courts. However, it also observes that, as the Government have argued, a 1997 amendment to Article 128 of the Turkish Code of Criminal Procedure clearly establishes a right under Turkish law to challenge in the courts decisions to hold a suspect in police custody. It follows that such a remedy exists in theory. As to how the remedy operates in practice, the Court notes that the Government have not furnished any example of a judicial decision rendered by a State Security Court where a public prosecutor's order for a suspect to be held in police custody has been quashed before the end of the fourth day (the statutory limit for the period that the public prosecutor may order suspects to be held in police custody) (see *Öcalan v. Turkey* [GC], No 46221/99, CEDH 2005, §§ 68-69).

13. In the light of its case-law (see, in particular, *Sakık and others v. Turkey*, judgment of 26 November 1997, Reports 1997-VII, pp. 2623-2624, § 44), the Court rejects the Government's objection.

14. 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

15. The Government contended that the applicant's arrest had been based on the existence of reasonable grounds of suspicion of his having committed a terrorist offence and that the custodial measure had been ordered by a competent authority and enforced by that authority in accordance with the requirements laid down by the applicable law at the relevant time. They reiterated that the relevant law had since been amended in accordance with the case-law of the Court, therefore the applicant's allegations were groundless.

16. The Court has accepted on several occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see *Brogan and Others*, cited above, p. 33, § 61, *Murray*, cited above, p. 27, § 58, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2282, § 78, *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2653, § 41, and *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2623, § 44). This does not mean, however, that the investigating authorities have carte blanche under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved (see *Murray*, cited above, p. 27, § 58).

17. The Court observes that the applicant was held in police custody for ten days from 21 March to 31 March 2000. It recalls 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 (see *Brogan and Others*, cited above, p. 33, § 62).

18. 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 him for ten days without judicial intervention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant left the issue of the determination of the amount for the pecuniary and non-pecuniary damages to the discretion of the Court.

22. The Government expressed no opinion.

23. As regards the alleged pecuniary damage sustained by the applicants, the Court notes that the applicants have not produced any documents in support of their claim, which the Court, accordingly, dismisses.

24. With regard to non-pecuniary damage, the Court observes that the applicant may be considered to have suffered certain amount of distress resulting from his detention for ten days without the opportunity to challenge its lawfulness, which cannot be sufficiently compensated by finding a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant requested the Court to determine the amount for the costs and expenses he incurred before the domestic authorities and before the Court.

26. The Government expressed no opinion.

27. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicant failed to substantiate his claim in full as he failed to produce any receipts or documents evidencing the incurred costs and expenses. However, in the circumstances of the case, it is reasonable to award the applicant EUR 1,000 under this head.

C. Default interest

28. 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*
   (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 2,000 (two thousand euros) in respect of non-pecuniary damage, and EUR 1,000 (one thousand 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar

Boštjan M. ZUPANČIČ President