



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

FOURTH SECTION

CASE OF SELÇUK v. TURKEY

(Application no. 21768/02)

JUDGMENT

STRASBOURG

10 January 2006

FINAL

10/04/2006

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 Selçuk v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr R. TÜRMEK,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 8 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 21768/02) 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, Mr Vehbi Selçuk ("the applicant"), on 27 May 2002.

2. The applicant was represented by Ms S. Kayaalp, a lawyer practising in Izmir. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. On 8 November 2004 the Court decided to communicate the application 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.

THE FACTS

4. The applicant was born in 1985 and lives in Izmir.

5. On 27 December 2001 the applicant, who was sixteen years old at the time, was arrested by police officers from the Karşıyaka Police Station in connection with an ongoing investigation concerning a robbery that had taken place in a primary school. In his police statement, the applicant confessed that he had been involved in a robbery on 26 November 2001 together with two of his friends. He explained that he had helped his friends in carrying a computer from the primary school. The same day he was brought before the public prosecutor, and the investigating judge at the Karşıyaka Magistrate's Court, where he repeated his statement to the police.

Having regard to the evidence in the file and considering that there was a risk of absconding, the investigating judge ordered that the applicant be detained on remand in a prison together with adults.

6. The applicant's representative challenged this decision before the Karşıyaka Criminal Court and maintained that the evidence in the file did not suffice to keep her client in detention. Invoking Articles 5 and 6 of the Convention, she requested that the applicant be released.

7. On 10 January 2002 the Karşıyaka public prosecutor instituted criminal proceedings against the applicant in the Karşıyaka Criminal Court. He charged him with robbery under Article 493 of the Criminal Code.

8. On 14 January 2002 the Karşıyaka Criminal Court commenced the trial against the applicant. Taking into account the seriousness of the offence and the evidence in the case-file, it ordered that the applicant's detention on remand be continued.

9. On 16 January 2002 the applicant's representative challenged this decision. She invoked Articles 5 and 6 of the Convention and alleged that there was not sufficient evidence in the file to keep her client in detention. She further maintained that pursuant to Article 104 of the Criminal Procedure Code, a person could only be held in detention on remand if there were a risk of absconding and/or of tampering with evidence. She stated that the authorities knew where the applicant lived and there were no sufficient grounds to believe that the applicant would try to flee. Furthermore, according to the lawyer, as all the evidence relating to the case had already been gathered by the authorities, there was no risk of tampering with evidence.

10. On 30 January 2002 the Karşıyaka Assize Court refused the applicant's request for release basing itself on the nature and seriousness of the accusation, and the evidence in the file.

11. During the hearing which was held on 8 February 2002, the Karşıyaka Assize Court heard the applicant's testimony. Before the court, the applicant denied the charges and stated that he had not been involved in the robbery. Underlining that the applicant was a minor, the representative of the applicant asked the court for his release. Having regard to the nature of the crime, and taking into consideration the time spent in detention, the court decided that the applicant's detention should be continued.

12. On 7 March 2002 the applicant's representative asked the Karşıyaka Criminal Court to release her client. She maintained that he had been in detention since 27 December 2002 and stated that there was no sufficient evidence to keep him in detention. The court once again refused her request.

13. On 28 March 2002 the applicant's representative further requested her client's release referring to Article 5 of the Convention. She stated that the court was not examining their requests for release thoroughly. She contended that the applicant's release would not in any way pose a danger

to public order. She also stated that the applicant was ready give a guarantee to offset any risk of absconding.

14. On 29 March 2002 the Karşıyaka Criminal Court dismissed the applicant's request relying on the evidence in the file and the seriousness of the offence.

15. On 5 April 2002 the Karşıyaka Criminal Court held another hearing, at the end of which it ordered that the applicant remain in detention on remand.

16. On 9 April 2002 the applicant's lawyer challenged this decision before the Karşıyaka Assize Court. She maintained that her client was a minor and could not be kept in detention for such a long time. In this respect, she invoked Article 5 of the Convention and Article 37 (b) of the United Nations Convention on the Rights of the Child.

17. On 10 April 2002 the Karşıyaka Assize Court rejected the request for release basing itself on the evidence in the file, the time spent in detention and the nature of the offence.

18. On 1 May 2002, after spending almost four months in detention on remand, the applicant was released pending trial.

19. The proceedings against the applicant are still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. As regards Article 5 § 1(c) of the Convention

20. The applicant complained under Article 5 § 1 (c) of the Convention that he had been detained unlawfully since there existed no "reasonable suspicion" of his having committed an offence.

21. The Government denied the allegations. They stated that the applicant was taken into custody on suspicion of having been involved in a robbery.

22. The Court recalls that the "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention laid down in Article 5 § 1 (c) of the Convention. This requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case (see *Fox, Campbell and Hartley*

v. the United Kingdom, judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

23. It further observes that the reasonable suspicion as provided in this provision does not mean that the suspect's guilt must be established and proved at the time of the arrest. The object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge which comes at the next stage of the process of criminal investigation (*see Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, p. 29, § 53, and *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55).

24. The Court notes in this context that the applicant was arrested in the course of an investigation carried out concerning a robbery which had taken place on 26 November 2001 in a primary school. In these circumstances, the suspicion against him may be considered to have reached the level required by Article 5 § 1 (c) as the purpose of the deprivation of liberty was to confirm or dispel the suspicion about the involvement of the applicant in this robbery. Accordingly, the facts disclose no appearance of a violation of Article 5 § 1 (c) of the Convention

25. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. As regards Article 5 § 3 of the Convention

26. The applicant complained that his detention on remand exceeded the "reasonable time" requirement as provided in Article 5 § 3 of the Convention, which reads in so far 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."

The Government contested that argument.

1. Admissibility

27. 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.

2. Merits

28. The Government stated that the applicant's detention on remand which lasted for about four months should be considered as reasonable within the circumstances of the case. In this respect, they maintained that the offence, with which the applicant was charged, was of a serious nature and the applicant's detention was necessary to prevent him from committing any further offences or from absconding. The Government also submitted that the national courts had refrained from releasing the applicant, as they feared that the applicant could try to influence the witnesses or tamper with evidence. Finally, they argued that there was a genuine public interest for his continued detention.

29. The applicant contested these arguments. He stated that, when the national courts examined his requests for release, they solely ruled on the basis of the evidence in the file and the nature of the offence with which he was charged. According to the applicant, his requests were not discussed thoroughly before the courts in that it was never established whether there was a real risk of absconding or tampering with evidence.

30. 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).

31. 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).

32. The Court noted that, in the instant case, the period to be taken into consideration began on 27 December 2001 and ended on 1 May 2002, when the applicant, who was a minor at the time, was released pending trial. It thus lasted more than four months. During this period, the Karşıyaka Assize 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”.

33. In the Government’s observations it is stated that by prolonging the applicant’s detention on remand, the domestic authorities aimed at preventing the risk of the applicant’s absconding, and of his committing a similar offence. The Government further alleged that there existed a genuine public interest for his continued detention. The Court recalls at this point that, apart from the risk of absconding, the other arguments raised by the Government were not used in the domestic courts’ decisions.

34. The Court reiterates in the first place 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). Expectation of a heavy sentence and weight of evidence may be relevant but are not as such decisive and the possibility of obtaining guarantees may have to be used to offset any risk (see *Baginski v. Poland*, no. 37444/97, § 72, 11 October 2005). In this connection, the Court also observes that although in the instant case the applicant’s lawyer had suggested giving a guarantee to the domestic court, it appears from the case file that this proposal was never taken into consideration by the national courts. The domestic authorities have thus failed to mention any factual circumstances capable of showing the existence of a danger of the applicant’s absconding. Secondly, the authorities have never referred to any previous convictions which could give a ground for a reasonable fear that the applicant might commit a new offence if released (see *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 70). As regards the danger posed to the public, this argument does not appear in itself a persuasive consideration in the circumstances of the present case (see *Romanov v. Russia*, no. 63993/00, § 94, 20 October 2005). The Court also notes that 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 cannot alone 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).

35. Finally, the Court observes that the applicant’s lawyer repeatedly brought to the attention of the authorities the fact that the applicant was a minor and invoking Article 37 (b) of the United Nations Convention on the Rights of the Child, she requested the court to release the applicant (see paragraph 16 above). It appears from the case-file that the authorities never

took the applicant's age into consideration when deciding on his continued detention.

36. In the light of the foregoing and having regard particularly to the fact that the applicant was a minor at the time, the Court finds that the authorities have failed to convincingly demonstrate the need for the applicant's detention on remand for more than four months.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

40. The Government contended that these claims were excessive.

41. 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 awards the applicant EUR 750 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed EUR 360 in respect of communication and translation costs and EUR 5,000 for the legal fees

43. The Government submitted that these claims were unsubstantiated. They argued that no documents had been provided by the applicant in support of his claims.

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

C. Default interest

45. 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 complaint concerning the applicant's length of detention on remand admissible and the remainder of the application inadmissible;
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 amounts free of any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
 - (i) EUR 750 (seven hundred and fifty euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand and five hundred euros) in respect of costs and expenses;
 - (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 10 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President