



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

THIRD SECTION

CASE OF TACIROĞLU v. TURKEY

(Application no. 25324/02)

JUDGMENT

STRASBOURG

2 February 2006

FINAL

02/05/2006

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 Taciroğlu 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 R. TÜRMEŒ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 25324/02) 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. Yeşim Taciroğlu, on 30 May 2002.

2. The applicant was represented by Mrs M. Kırdök and Mr M.A. Kırdök, 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 on remand exceeded the reasonable time requirement of Article 5 § 3 of the Convention.

4. On 4 April 2005 the Court decided to communicate the application 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.

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

THE FACTS

6. The applicant was born in 1972. She is detained in Gebze Prison.

7. On 17 September 1993 the applicant was arrested by police officers from the anti-terrorism branch of the Istanbul Security Directorate on suspicion of being a member of Dev-Sol (Revolutionary Left), and was taken into custody. During the operation, the police officers gathered guns

and illegal documents from the flat where they had captured the applicant. The applicant had also two forged identity cards in her possession.

8. On 1 October 1993 she was brought before the investigating judge at the Istanbul State Security Court. Subsequently, the investigating judge ordered the applicant's detention on remand.

9. On 31 December 1993 the public prosecutor filed a bill of indictment with the Istanbul State Security Court against twenty-five persons, including the applicant, and requested that the applicant be punished pursuant to Article 146 § 1 of the Criminal Code with the death penalty.

10. Throughout the criminal proceedings, either on its own motion or at the applicant's request, the Istanbul State Security Court examined and ordered the applicant's continued detention. The court relied on "the serious nature of the offences with which the applicant had been charged, the state of evidence, the content of the case file, and the duration of the detention" when further detaining the applicant. On two occasions on 3 November 1997 and 5 May 2000, the court also noted that the case was due to be decided soon.

11. On 17 December 2003 the applicant was convicted of the offence as charged and sentenced to life imprisonment.

12. On 1 April 2005 the Court of Cassation quashed the applicant's conviction, and remitted the case back to the Istanbul State Security Court.

13. The case is still pending before the Istanbul State Security Court.

THE LAW

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

14. The applicant complained that her 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."

A. Admissibility

15. The Government asked the Court to declare the application inadmissible under Article 35 § 3 of the Convention. They maintained that the applicant lost her "victim status" since the State Security Court which sentenced her to life imprisonment on 17 December 2003, deducted the period of detention on remand which the applicant had undergone from the

actual sentence imposed. They further argued that there were various domestic remedies under Turkish law that the applicant could exhaust if she were to be acquitted at the end of the criminal proceedings.

16. The Court reiterates that the reckoning of detention on remand as part of a later sentence cannot eliminate a violation of Article 5 § 3, but may have repercussions only under Article 41 on the basis that it limits the loss occasioned (*Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A. no.22, § 69, and *Kimran v. Turkey*, no. 61440/00, § 41, 5 April 2005). Furthermore, it notes that the decision against the applicant was quashed by the Court of Cassation and the case was remitted to the State Security Court where it is still pending whilst the applicant remains in detention. Accordingly, the Government's objection that the applicant could not be qualified as a "victim" should be rejected.

17. The Court considers that this 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

18. In the instant case, the period to be taken into consideration began on 17 September 1993 and ended on 17 December 2003, when the applicant was convicted. It thus lasted 10 years and 3 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, the contents of the case-file and the duration of detention". On two occasions it also mentioned that the case was due to be decided upon (paragraph 10 above).

19. 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).

20. 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).

21. 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.

22. As for the reason that the case was at the judgment stage, the Court notes that more than three years elapsed between the moment at which the domestic court pronounced this reasoning for the last time and the delivery of its judgment on the case (paragraph 11 above).

23. Finally, although, in general, the expression "the state of the 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).

24. The foregoing considerations are sufficient to enable the Court to conclude that the length of the applicant's pre-trial detention, which lasted over 10 years and 3 months, taken together with the stereotype reasoning of the court, has exceeded the reasonable-time requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 35,000 new Turkish liras (YTL) in respect of non-pecuniary damages.

27. The Government considered this amount as excessive and unacceptable.

28. The Court notes that the applicant must have suffered non-pecuniary damage such as distress resulting from the lengthy period in detention on remand, which cannot be sufficiently compensated by finding of a violation. Making its assessment on equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed YTL 400 in respect of communication and translation costs, and YTL 7,920 for the expenses incurred before the Court. She submitted that the latter included the visiting and travel expenses of her lawyer, as well as thirty-six hours of work relating to the proceedings before the Court in preparing the application and the observations. She claimed that her representative had applied the scale recommended by the Istanbul Bar for applications before the Court.

30. The Government submitted that these claims were exaggerated and not documented.

31. 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 awards the applicant the sum of EUR 2,500 for costs and expenses for the proceedings before the Court.

C. Default interest

32. 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, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, and EUR 2,500 (two thousand five hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into new 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 amount[s] 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 2 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President