



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

SECOND SECTION

CASE OF AHMET METE v. TURKEY

(Application no. 77649/01)

JUDGMENT

STRASBOURG

25 April 2006

FINAL

25/07/2006

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 Ahmet Mete 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. TÜRMEK,

Mr M. UGREKHIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 77649/01) 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 Ahmet Mete (“the applicant”), on 22 October 2001.

2. The applicant was represented by Mr A. Terece, 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 1 April 2004 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s police custody and the authorities’ alleged interference with his right to contact his family members and to have the assistance of a lawyer during his custody 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 Third Section (Rule 52 § 1)

5. On 27 September 2005, under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Aydın.

7. The applicant was arrested in Nusaybin on 8 July 2001 by the Prevention of Terrorism Department of the Nusaybin Security Directorate, on suspicion of aiding and abetting the PKK¹.

8. On the same day the applicant signed a form whereby his rights as a detainee were explained to him. The form included his right to inform one of his relatives about his detention and his right to request the assistance of a lawyer.

9. According to the custody records (*nezaret kayıt defteri*), the police informed the husband of the applicant's sister about his detention. Moreover, it was noted in these records that the applicant did not request the assistance of a lawyer.

10. During his interrogation by the police officers at the Nusaybin Security Directorate, the applicant confessed in detail to his involvement in the activities of the PKK. According to the interrogation minutes dated 9 July 2001, drafted by the police and signed by the applicant, he was informed of his right to have access to legal assistance of one or more lawyers at any stage and level of the investigation.

11. On 10 July 2001 the applicant was transferred to the Prevention of Terrorism Department of the İzmir Security Directorate, for further questioning.

12. On 11 July 2001, upon the request of the İzmir Security Directorate, the İzmir Public Prosecutor authorised the applicant's detention in police custody until 13 July 2001.

13. On 13 July 2001, during his questioning by the İzmir Public Prosecutor at the State Security Court, the applicant described the work that he carried out for the PKK. He confessed that he was working as a courier for the members of the organisation who were in prison. On the same day the applicant was brought before the İzmir Magistrate's Court. He denied his statement given in Nusaybin Security Directorate, as he alleged that he had signed it under duress. He confirmed his statement given before the public prosecutor. The magistrate's court ordered his detention on remand.

14. On 14 August 2001 the İzmir Public Prosecutor at the State Security Court filed a bill of indictment charging the applicant with membership of a terrorist organization, the PKK, and with assisting and abetting the said organisation, contrary to Articles 169 of the Turkish Criminal Code and

¹ The Kurdistan Workers' Party.

Article 5 of the Prevention of Terrorism Act of 12 April 1991. Before the İzmir State Security Court, the applicant was represented by his lawyer.

15. On 19 September 2002, the court convicted the applicant under Article 168 § 2 of the Criminal Code and sentenced him to twelve years and six months' imprisonment. The court held that during his questioning by the police and the public prosecutor, the applicant had described his involvement with the activities of the PKK. Moreover, although in his statements given during the hearings he had claimed that he was not a member of the PKK, he had explained in detail his involvement with the activities of the organisation. Moreover, the other accused had also confirmed the fact that the applicant took new members of the organisation to the east of the country to join the guerrilla fight carried out in the mountains and acted as a courier for PKK members who were in prison.

16. On 4 March 2003 the Court of Cassation upheld the decision of 19 September 2002.

II. RELEVANT DOMESTIC LAW

17. 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.

18. Section 1 of Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained provides:

“Compensation shall be paid by the State in respect of all damage sustained by persons:

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time allowed by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time allowed for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being arrested or detained in accordance with the law, are not subsequently committed for trial ..., or are acquitted or discharged after standing trial; or

(7) who have been sentenced to a term of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only...”

THE LAW

19. The applicant complained under Article 5 § 3 of the Convention that the length of his detention in police custody was excessive. Moreover, invoking Article 5 § 1 of the Convention, the applicant alleged that he was deprived of the assistance of a lawyer and that he was not able to see his family members during his detention in police custody. The Court finds it more appropriate to examine the applicant’s latter complaints under Articles 6 §§ 1 and 3 (c) and 8 of the Convention, respectively.

I. ADMISSIBILITY

A. Article 5 § 3 of the Convention

20. The Government submitted that the applicant’s complaint concerning the length of his detention in police custody should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention. The Government argued that, pursuant to Article 128 of the Code of Criminal Procedure, the applicant could have challenged the length of his detention in police custody. They maintained that the applicant could also have sought compensation pursuant to Law no. 466 on 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 this jurisprudence.

22. Consequently, the Court rejects the Government’s preliminary objection. It further notes that this complaint is not inadmissible on any other grounds and must, therefore, be declared admissible.

B. Articles 6 §§ 1 and 3 (c) of the Convention

23. The applicant complained that he was deprived of his right to have the assistance of a lawyer during his police custody.

24. The Government contended that the applicant did not request legal assistance during the preliminary investigation.

25. According to the Court's case-law, Article 6, especially paragraph 3, may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see, *Imbrioscia v. Switzerland* judgment of 24 November 1993, Series A no. 275, p. 13, § 36). The manner in which Article 6 §§ 1 and 3(c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. The question is whether the lack of legal representation during the preliminary investigation, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing (*John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, § 63).

26. The Court observes that according to the interrogation minutes and the form which were signed by the applicant, he was reminded of his right to have legal assistance during his questioning by the police (paragraphs 8 and 10). Furthermore, it was noted in the prison records that the applicant did not request legal assistance (paragraph 9). However, even assuming that the authorities refused to assign him a lawyer, despite his explicit request, the Court is of the opinion that the lack of legal assistance at the early stage of the proceedings did not deprive the applicant of a fair hearing. In reaching this conclusion, the Court has taken into account the entirety of the proceedings, in particular the fact that the applicant had a lawyer throughout the proceedings before the İzmir State Security Court and the Court of Cassation. Moreover, the Court notes that the İzmir State Security Court based its final decision, not only on his statements given in police custody but also on his statements given during the hearings, his confessions made before the public prosecutor and the statements of the other accused (see, *mutatis mutandis*, *Mamaç and Others v. Turkey*, nos. 29486/95, 29487/95 and 29853/96, § 48, 20 April 2004, *Sarıkaya v. Turkey*, no. 36115/97, § 67, 22 April 2004).

27. The applicant's lack of access to legal assistance during the preliminary investigation cannot, therefore, be considered to have deprived him of a fair trial within the meaning of Article 6 §§ 1 and 3 (c) of the Convention.

28. The Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must, therefore, be declared inadmissible.

C. Alleged violation of Article 8 of the Convention

29. The applicant complained that his family was not informed of his detention in police custody. He alleged that, contrary to what was noted in the custody records, the husband of his sister was not contacted. He

maintained that, at a later stage, following his statements given in police custody, the husband of his sister was also taken into police custody.

30. The Government contended that the applicant was informed of his right to contact his relatives when he signed the form dated 8 July 2001 (paragraph 8). Furthermore, they maintained that the custody records reveal the fact that one of his relatives was informed about the applicant's detention (paragraph 9).

31. The Court observes that at no stage during his custody did the applicant make a request to contact his family (see, *a contrario*, *McVeigh, O'Neill and Evans v. the United Kingdom*, no. 8022/77, 8025/77 and 8027/77, Commission's report of 18 March 1981, Decisions and Reports (DR) 25, p. 52, § 237). Nor is there any evidence in the case-file as to a family member trying to contact the applicant. Furthermore, the Court observes that the applicant did not submit any evidence which could call into question the custody records or add probative weight to his allegation that the husband of his sister was not informed of his arrest. In view of the above, it considers that the applicant has failed to substantiate his allegation.

32. The Court therefore concludes that the applicant's complaint concerning the authorities' alleged interference with his right to contact his family members during his police custody is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be declared inadmissible.

II. MERITS

33. The applicant alleged that he was held in police custody for five 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 brought promptly before a judge or other officer authorised by law to exercise judicial power."

34. The Government argued that the length of the applicant's detention in police custody was in conformity with the legislation in force at the time. Given that the relevant law has since been amended in accordance with the case-law of the Court, the applicant's allegation was groundless.

35. The Court notes that the applicant's detention in police custody lasted five days. It reiterates that, in the case of *Brogan and Others v. the United Kingdom* (judgment of 29 November 1988, Series A no. 145 B, pp. 33-34, § 62), it held that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict time constraints of Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism (see *Brogan and*

Others v. the United Kingdom, judgment of 29 November 1988, Series A no. 145 B, pp. 33-34, § 62).

36. Even though the investigation of terrorist offences, as supposed in this case, presents the authorities with special problems, the Court cannot accept that it was necessary to detain the applicant for five days without judicial intervention.

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

III. 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 the sum of 5,000 euros (EUR) for non-pecuniary damage.

40. The Government contested the amount requested by the applicant and proposed that the finding of a violation would constitute in itself sufficient compensation.

41. The Court considers that the applicant has sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards him EUR 1,000 under this head.

B. Costs and expenses

42. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

43. The Government maintained that only expenses actually incurred can be reimbursed. In this connection, they submitted that all costs and expenses must be documented by the applicant or his representative and that approximate figures or lists cannot be considered as relevant and necessary documents to prove the expenditure.

44. Deciding on an equitable basis and having regard to the criteria laid down in its case-law, the Court considers it reasonable to award the applicant EUR 1,500 for his costs and expenses.

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 applicant's complaint concerning the length of his detention in police custody 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, to be converted into new Turkish liras at the rate applicable at the date of settlement and to be paid into the applicant's bank account in Turkey:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 25 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President