



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

FOURTH SECTION

CASE OF HASAN CEYLAN v. TURKEY

(Application no. 58398/00)

JUDGMENT

STRASBOURG

23 May 2006

FINAL

23/08/2006

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 Hasan Ceylan 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. TÜRMEŒ,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 4 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 58398/00) 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 Hasan Ceylan ("the applicant"), on 30 March 2000.

2. The applicant, who had been granted legal aid, was represented by Mr M. A. Kirdök and Mrs M. Kirdök, lawyers practising in İstanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 19 May 2005 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.

4. The applicant and the Government each filed observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in İstanbul.

6. On 9 October 1994 the applicant was arrested and taken into police custody by police officers from the Anti-terror branch of the İstanbul

Security Directorate on suspicion of membership of an illegal organisation, namely the TKP-ML/TIKKO¹.

7. On 21 October 1994 the applicant was brought before a judge at the İstanbul State Security Court who ordered his remand in custody.

8. On 18 November 1994 the public prosecutor at the İstanbul State Security Court filed a bill of indictment against the applicant, together with ten other suspects, accusing him of membership of an illegal organisation. He requested that the applicant be convicted and sentenced under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713.

9. On 7 December 1994 the criminal proceedings against the applicant commenced before the İstanbul State Security Court.

10. At the end of the hearings held on 1 February and 24 March 1995, the first-instance court ordered that the applicant's detention pending trial be continued having regard to the nature of the offence that he was charged with, the state of the evidence, the date of the detention on remand decision and of the fact that he had not been heard before the court.

11. On 15 May 1995 the applicant made statements before the İstanbul State Security Court and denied the charges against him. He contended that he was not a member of an illegal organisation. At the end of the hearing, the court decided that his detention pending trial should be continued having regard to the nature of the offence that he was charged with, the state of the evidence and the date of the decision to remand him in custody.

12. On 30 June 1995 the applicant's representative requested the İstanbul State Security Court to release the applicant pending trial. She contended that a third person, K.T., had left a briefcase containing illegal documents in the applicant's house and that he had been arrested and prosecuted because of these documents. In this connection, the lawyer maintained that the charges brought against the applicant under Article 168 § 2 of the Criminal Code were erroneous and that the applicant could only be charged, under Article 169 of the Criminal Code, with aiding and abetting members of an illegal organisation. The applicant's lawyer finally claimed that the acts of the applicant could not be considered to constitute an offence under Article 169 of the Criminal Code and that he should be released, since the length of his remand in custody was excessive. The İstanbul State Security Court dismissed the request.

13. Between 30 June 1995 and 7 February 1997 the first-instance court held twelve more hearings. Throughout these hearings, the applicant and his representative made written and oral submissions and requested that the applicant be released pending trial. They reiterated their submissions of 30 June 1995. The İstanbul State Security Court dismissed the requests on all occasions and held that the applicant's detention pending trial should

1. Communist Party of Turkey/Marxist-Leninist, Turkish Workers and Peasants' Liberation Army.

continue having regard to the nature of the offence that he was charged with, the state of the evidence and the date of the detention on remand decision.

14. On 7 February 1997, upon the request of the public prosecutor, the İstanbul State Security Court ordered the applicant and four of his co-accused to make additional defence submissions in view of the possibility of the application of Article 168 § 1 of the Criminal Code, instead of Article 168 § 2, in the verdict. At the end of the hearing, the court once again dismissed the applicant's request for release pending trial.

15. On 28 March 1997 the applicant made his additional defence submissions before the İstanbul State Security Court. On the same day, the court once more dismissed the applicant's request to be released pending trial.

16. Until 24 December 1999 the İstanbul State Security Court held sixteen more hearings. At the end of every hearing, the court ordered the applicant's continued remand in custody taking into consideration the nature of the offence that he was charged with, the state of the evidence, the content of the case-file and the length of detention on remand.

17. On 24 December 1999 the İstanbul State Security Court convicted the applicant of aiding and abetting members of an illegal organisation under Article 169 of the Criminal Code and Article 5 of Law no. 3713. The court held that there was insufficient evidence to convict the applicant of membership of the TKP-ML/TIKKO. The court sentenced the applicant to five years' imprisonment and ordered his release from detention in view of the length of his remand in custody.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. A description of the relevant domestic law at the material time can be found in *Demirel v. Turkey* judgment (no. 39324/98, §§ 47-49, 28 April 2003).

THE LAW

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

19. The applicant complained that his 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

20. The Court considers that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

21. The Government maintained that the applicant’s arrest was based on the existence of reasonable grounds of suspicion of his having committed an offence and that the custodial measure had been reviewed periodically by the competent authority, with special diligence, in accordance with the requirements laid down by the applicable law at the relevant time. They pointed out that the offence with which the applicant was charged was of a serious nature, and that his continued remand in custody was necessary to prevent crime and to preserve public order. Finally, the Government submitted that the State Security Court had deducted from the actual sentence imposed the period of his remand in custody and that the overall length of his remand in custody was reasonable in view of the number of co-accused and the complex nature of the proceedings.

22. The applicant contested these arguments. He submitted, in particular, that despite the fact that no new evidence had been admitted to the case-file in his respect, the decisions to prolong his remand in custody were based on stereotyped reasons. The applicant claimed that in accordance with the execution of sentences under Article 169 of the Criminal Code, he would have spent only three years and nine months in prison whereas he had been remanded in custody for five years.

23. The Court reiterates that it falls in the first place to the domestic 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 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 applicants in their appeals, that the Court must determine whether or not there has been a

violation of Article 5 § 3 of the Convention (see *Sevgin and İnce v. Turkey*, no. 46262/99, 20 September 2005, § 61).

24. The persistence of a 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 continued 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).

25. In the instant case, the Court notes that the period to be taken into account began on 9 October 1994 when the applicant was taken into police custody and ended on 24 December 1999 when he was convicted by the first-instance court. It thus lasted approximately five years, two months and fifteen days. During this time, the first-instance court considered the applicant's continued detention at the end of each hearing, either on its own motion or upon the request of the applicant. However, the Court notes from the material in the case file that the State Security Court ordered the applicant's continued detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of the evidence".

26. 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 sentence 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, and *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.

27. 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*, cited above, § 59).

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 7,650 new Turkish liras (YTL) (approximately 4,800 euros (EUR)) in respect of pecuniary damage for loss of earnings and YTL 15,000 (approximately EUR 9,411) of non-pecuniary damage.

32. The Government disputed these claims.

33. As regards the alleged pecuniary damage sustained by the applicant, the Court notes that he has failed to produce any receipt or documents in support of his claim. The Court accordingly dismisses it.

34. On the other hand, the Court considers that the applicant must have suffered non-pecuniary damage such as distress and anxiety resulting from the lengthy period in remand in custody, which cannot be sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed, in total, YTL 5,800 (approximately EUR 3,639) for costs and expenses incurred before the Court. In support of his claim, the applicant submitted a schedule of costs prepared by his representative and the İstanbul Bar Association's recommended minimum fees list for 2005. However, he did not submit any receipt or invoice.

36. The Government disputed the applicant's claim.

37. 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 it reasonable to award the sum of EUR 1,000 less EUR 715 received by way of legal aid from the Council of Europe.

C. Default interest

38. 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 according to 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:
 - (i) EUR 4,500 (four thousand and five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 285 (two hundred and eighty five 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 23 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President