



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

SECOND SECTION

CASE OF SUYUR¹ v. TURKEY

(Application no. 13797/02)

JUDGMENT

This version was rectified on 14 April 2008 under Rule 81 of the Rules of the Court.

STRASBOURG

23 May 2006

FINAL

23/08/2006

This judgment may be subject to editorial revision.

1. Rectified on 14 April 2008. The name of Abdurrazak Suyur was spelled as Abdürrezzak Şuyur.

In the case of Suyur¹ v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr M. UGREKHĖLIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 2 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 13797/02) 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 Abdurrazak Suyur¹, on 27 February 2002.

2. The applicant was represented before the Court by Mr S. Kurbanoglu, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 8 July 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of detention on remand, the right to a fair trial by an independent and impartial court within a reasonable time, the right to be presumed innocent and the right to examine witnesses. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. The applicant filed observations on the merits and admissibility on a timely basis (Rule 59 § 1). The Government submitted their observations outside the time limit. They have therefore not been admitted to the case file.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

1. Rectified on 14 April 2008. The name of Abdurrazak Suyur was spelled as Abdürrezzak Şuyur.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On 26 April 1993 the applicant was taken into custody in Marmaris by police officers from the Muğla Security Department on suspicion of membership of a terrorist organisation, and he was held in custody until 21 May 1993.

7. On 21 May 1993 the Siirt Civil Court of First Instance ordered the applicant's detention on remand.

8. On 8 June 1993 the Public Prosecutor at the Diyarbakır State Security Court filed a bill of indictment accusing the applicant of membership of an illegal terrorist organisation and aiding and abetting the said organization, contrary to Article 125 of the Turkish Criminal Code.

9. On 16 June 1993 the Diyarbakır State Security Court commenced the trial against the applicant and two other suspects and prolonged the applicant's detention.

10. The State Security Court considered the applicant's continued detention on 58 occasions, either on its own motion or upon the applicant's request. On each occasion, the applicant's continued detention was ordered having regard to the nature of the offence, the state of evidence and the content of the file.

11. On 27 December 2001, after holding 58 hearings, the Diyarbakır State Security Court convicted the applicant under Article 146 of the Criminal Code and sentenced him to death, since commuted to life imprisonment.

12. On 10 July 2002, upon the applicant's appeal, the Court of Cassation upheld the judgment of the State Security Court.

II. RELEVANT DOMESTIC LAW

13. A full description of the domestic law may be found in the judgments of *Demirel v. Turkey* (no. 39324/98, §§ 47-49, 28 April 2003) and *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002).

THE LAW

14. The applicant complained that the length of his detention on remand exceeded the "reasonable time" requirement of Article 5 § 3 of the Convention. He further alleged that he was not tried by an independent and impartial tribunal within a "reasonable time", contrary to Article 6 § 1 of the

Convention. He asserted that, since he was detained during the trial, his right to the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, was breached. He further alleged that he could not put questions to the main prosecution witness, contrary to Article 6 § 3 (d) of the Convention.

15. The aforementioned Convention provisions read as follows:

Article 5 § 3

“3. 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.”

Article 6

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law” “

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

3. Everyone charged with a criminal offence has the following minimum rights: ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

I. ADMISSIBILITY

16. The Court considers that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

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

17. As regards the length of the applicant's detention on remand of which he complains, the Court notes that the period to be taken into account began on 26 April 1993 and ended on 27 December 2001. It thus lasted eight years and eight months.

18. The Court notes from the material in the case file that the State Security Court considered the applicant's detention on remand 58 times, either on its own motion or upon the request of the applicant. On each occasion it prolonged that detention using identical, stereotyped terms, such

as “having regard to the nature of the offence, the state of evidence and the content of the file”. 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 nevertheless, alone, cannot justify a length of preventive detention of well over eight and a half years (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, *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).

19. Consequently there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. As regards the independence and impartiality of the Diyarbakır State Security Court and the fairness of the proceedings

20. The applicant alleged that he had been denied a fair hearing on account of the presence of a military judge on the bench of the Diyarbakır State Security Court which tried and convicted him.

21. The Court notes that it has previously examined similar applications concerning this composition of the State Security Courts and has found violations of Article 6 § 1 (see, among others, *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

22. The Court finds no reason to reach a different conclusion in the instant case. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

B. As regards the fairness of the proceedings

23. Having regard to its finding that the applicant’s right to a fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine the applicant’s other complaints under Article 6 §§ 2 and 3 (d) separately (see *İncal v Turkey*, judgment of 9 June 1998, *Reports of Judgment sand Decisions* 1998-IV, § 74, and *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII, § 45).

C. As regards the length of proceedings

24. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention.

25. The period to be taken into consideration began on 26 April 1993 and ended on 10 July 2002. It thus lasted more than nine years and two months for two levels of jurisdiction.

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

27. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

28. There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. Where the Court finds that an applicant has been convicted by a tribunal which is not independent and impartial within the meaning of Article 6 § 1, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant, upon his or her request, is granted in due course a retrial by an independent and impartial tribunal (*Öcalan v. Turkey*, [GC], n° 46221/99, § 210 *in fine*, CEDH 2005-...).

33. Moreover, having regard to the circumstances of the case and ruling on an equitable basis, the Court awards the applicant the global sum of EUR 8,000 in respect of his claims.

B. Costs and expenses

34. The applicant also claimed EUR 23,000 for the costs and expenses incurred before the domestic courts and the Strasbourg Court. He claimed that his representative had applied the scale recommended by the Diyarbakır Bar for applications to the Court.

35. The Government contested these claims.

36. 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 global sum of EUR 2,500 under this head.

C. Default interest

37. 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 in respect of the excessive length of the applicant's detention on remand;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint relating to the independence and impartiality of the Diyarbakır State Security Court;
4. *Holds* that it is not necessary to consider separately the applicant's other complaints under Article 6 §§ 2 and 3 (d) of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;
6. *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, together with any tax that may be applicable, to be converted into New Turkish liras at the rate applicable on the date of settlement:
 - (i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand 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;

7. *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.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President