



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

SECOND SECTION

CASE OF VAYIÇ v. TURKEY

(Application no. 18078/02)

JUDGMENT

STRASBOURG

20 June 2006

FINAL

20/09/2006

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 Vayiç 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 I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 18078/02) 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 İsrail Vayiç (“the applicant”), on 1 April 2002.

2. The applicant was represented by Mr E. Kanar and Ms Y. Bařara, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 June 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s detention pending trial and his right to a fair hearing within a reasonable time 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1963 and lived in Istanbul at the material time.

5. On 9 September 1996 he was taken into police custody by police officers from the Anti-Terrorist Branch of the Istanbul Security

Headquarters on suspicion of being a member of an illegal organisation. On 18 September 1996 a judge at the Istanbul State Security Court ordered the applicant's detention pending trial.

6. On 13 March 1997 the public prosecutor attached to the Istanbul State Security Court filed a bill of indictment charging the applicant and sixteen others with membership of an illegal organisation, under section 5 of the Prevention of Terrorism Act and Article 168 § 2 of the Criminal Code.

7. The first hearing was held on 21 May 1997.

8. On 11 March 1998 the defendants' representatives informed the court that criminal proceedings had been instituted in the Istanbul Assize Court against police officers who had allegedly ill-treated the defendants while they were in detention. The State Security Court requested the Istanbul Assize Court to send it the relevant case file for examination.

9. At a hearing on 15 May 1998, the State Security Court asked the Anti-Terrorist Branch of the Istanbul Security Headquarters and the Bakırköy Public Prosecutor's Office to produce documents and reports relating to certain incidents involving the accused. It also requested documents from two other courts before which separate proceedings against two of the accused were pending. At the next four hearings the State Security Court reiterated these requests, as it had received no response from the courts concerned.

10. At a hearing on 18 November 1998, since it had still not received from the Istanbul Assize Court the case file concerning those police officers accused of ill-treating certain defendants, the State Security Court revised its request and asked simply to be informed about progress in the case. It also requested a copy of the final decision once the case had been concluded. It reiterated this request at the next eleven hearings.

11. On 14 April 1999 the State Security Court decided to sever the case of one of the defendants and to join it to another case which was pending before a different chamber.

12. On 18 June 1999 the Public Prosecutor's Office submitted its opinion on the merits of the case.

13. At the next twenty-three hearings before the Istanbul State Security Court, the applicant's lawyer made applications for his client's release pending trial, which the court dismissed in view of the nature of the offence, the state of the evidence and the material in the case file. At hearings on 14 November 1997 and 11 March 1998, the court again remanded the applicant in custody, noting that his release would entail a risk of his absconding.

14. On 8 December 2000, having still not received any information concerning the case against the police officers pending before the Assize Court, the Istanbul State Security Court requested a copy of either the final decision or the indictment.

15. On 28 February 2001 the Istanbul Assize Court informed the State Security Court that the case was still pending and produced the indictment.

16. On 22 May 2001 the applicant's lawyer filed a petition with the Istanbul State Security Court requesting the applicant's release pending trial. He relied on Article 19 § 3 of the Constitution and Article 5 of the Convention. He contended that the court's continued refusal to grant bail was groundless. On 24 May 2001, noting the arguments put forward by the applicant's lawyer in his written petition and the opinion of the public prosecutor, a different chamber of the Istanbul State Security Court dismissed the application for release pending trial.

17. At a hearing of 19 October 2001, taking into account the length of the applicant's detention, the nature of the offence and the material in the case file, the Istanbul State Security Court decided to order the applicant's release on bail.

18. On 31 January 2003, after some thirty hearings, the State Security Court acquitted five of the accused, convicted the applicant and six others and suspended the proceedings for the remainder, in accordance with Law no. 4616 on conditional release, the suspension of proceedings or the execution of sentences in respect of crimes committed before 23 April 1999. It convicted the applicant under Article 168 § 2 of the Criminal Code and sentenced him to twelve years and six months' imprisonment.

19. On 25 May 2004 the Court of Cassation quashed the State Security Court's decision as regards the applicant and six others.

20. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, state security courts were abolished. The case against seven of the accused, including the applicant, was remitted to the Istanbul Assize Court.

21. In the resumed proceedings, on 2 September 2004 the Istanbul Assize Court summoned all the accused to the next hearing, so that they could submit their views on the Court of Cassation's decision. It also requested the Kadıköy Public Prosecutor to send it documents concerning an illegal demonstration in Kadıköy in 1996 which the accused were alleged to have organised and in which they had allegedly taken part.

22. At the hearing of 10 December 2004, the Istanbul Assize Court ordered the arrest of four of the accused, including the applicant, as they had not responded to the summonses sent to their addresses listed in the case file. It repeated its request to the Kadıköy Public Prosecutor.

23. Neither the applicant nor his representative was present at hearings held on 4 March 2005, 6 May 2005, 19 October 2005 and 3 February 2006. The Assize Court reissued warrants for the arrest of the applicant and three other absconders for the purpose of obtaining their submissions.

24. The case is still pending before the Istanbul Assize Court. The last hearing was held on 4 March 2005. The court has issued a fresh warrant for the applicant's arrest.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

25. The Government submitted that the application should be rejected for failure to exhaust domestic remedies pursuant to Article 35 § 1 of the Convention. They argued that the applicant could have sought compensation under Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained.

26. The Court notes 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 case-law.

27. Consequently, the Court rejects the Government's preliminary objection.

28. The Court notes that the 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.

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

29. The applicant complained that his detention pending trial, which lasted over five years, exceeded the "reasonable time" requirement of 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 and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

30. The Government argued that, according to Article 110 of the Code of Criminal Procedure, the maximum period of detention pending trial for a person who was the subject of a public prosecution was two years. If the person was accused of a crime for which the maximum sentence was more than seven years' imprisonment, as in the present case, the court could order that the detention period be extended. They maintained that the aim was to avoid the risk that the accused would collude with his co-accused, tamper with the evidence, abscond or re-offend.

They further alleged that the fact that the applicant had absconded proved that there had been good reason to prolong his detention pending trial.

31. The applicant maintained that he had been held in detention pending trial for a total of five years, one month and ten days. He argued that he was

merely accused of being a member of an illegal organisation. He therefore claimed that there could be no risk of his re-offending or perverting the course of justice. Moreover, he contended that the reason he had absconded was not to escape trial, but because he was a conscientious objector and was wanted by the authorities for failing to perform his military service.

32. The Court reiterates that it falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end, paying due regard to the principle of the presumption of innocence, they must examine all the facts arguing for or against the existence of a public interest justifying a departure from the rule in Article 5 of the Convention, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Muller v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 35).

33. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (*ibid.*).

34. In the instant case, the Court notes that the period to be taken into account began on 9 September 1996 and ended on 19 October 2001. It thus lasted more than five years and one month.

35. The Istanbul State Security Court considered the applicant’s continued detention at the end of each hearing, either of its own motion or at the applicant’s request. However, the Court notes from the material in the case file that the State Security Court ordered the applicant’s continued detention pending trial using identical, stereotyped terms, such as “having regard to the nature of the offence and the state of the evidence”. 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, nevertheless, taken alone in the present case, it cannot justify the length of the detention of which the applicant complains (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 v. Turkey*, no. 39324/98, § 59, 28 January 2003).

36. The Court further observes that, at two hearings which were held in the early stages of the proceedings, the Istanbul State Security Court ordered

the prolongation of the applicant's detention pending trial, alleging that his release would entail a risk of absconding. In the Court's opinion, although that risk materialised, it still does not justify the overall length of the applicant's detention pending trial.

37. Moreover, the Court notes that the Government referred to the seriousness of the charges which the applicant was facing. However, it reiterates that the gravity of the charges cannot by itself serve to justify long periods of detention pending trial (see, among others, *Ječius v. Lithuania*, no. 34578/97, § 94, ECHR 2000-IX).

38. Additionally, the Court notes that there was lack of special diligence on the part of the authorities in the conduct of the criminal proceedings. It observes that the Government did not explain why it had taken the public prosecutor at the Istanbul State Security Court almost six months to lodge an indictment against the applicant (paragraphs 5 and 6 above), or why it had taken nearly three years for the Istanbul Assize Court to reply to the State Security Court's inquiry regarding the case against the police officers (paragraphs 8 and 15 above). As a result of this latter element, hearings were regularly adjourned to another date (paragraphs 10 and 14 above). The Court further notes that, although the public prosecutor's office submitted its opinion on the merits of the case on 18 June 1998, the State Security Court waited more than four years and seven months before giving its final decision (paragraphs 12 and 18 above).

39. In the light of these considerations, the Court finds that the length of the applicant's detention pending trial violated Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicant further complained that the length of the criminal proceedings against him, which were still pending, violated the "reasonable time" requirement of Article 6 § 1 of the Convention, the relevant part of which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

41. The Government submitted that the case was complex, having regard to the number of accused and the charges they faced. It had been difficult to gather the evidence and determine the facts. Moreover, no negligence or delay could be imputed to the judicial authorities. The Government further maintained that, prior to the judgment of 31 January 2003, the Istanbul State Security Court had held thirty-two hearings and the applicant had contributed to the length of the proceedings by absconding.

42. The applicant alleged that the case was not complex as all the accused were charged simply with being members of an illegal organisation. He further complained that the Istanbul State Security Court held hearings every two months, which he considered excessive.

43. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

44. As regards the period to be taken into account, the Court finds that the proceedings commenced on 9 September 1996, the day of the applicant's arrest, and are still pending. They have therefore already lasted more than nine years and eight months for three levels of jurisdiction. However, the Court considers that the applicant cannot rely on the period during which he was a fugitive, when he sought to avoid being brought to justice in his country. The Court is of the opinion that the flight of an accused person has in itself certain repercussions on the scope of the guarantee provided by Article 6 § 1 of the Convention as regards the duration of proceedings. When an accused person flees from a State which respects the principle of the rule of law, it may be assumed that he or she is not entitled to complain of the unreasonable duration of proceedings following that flight, unless sufficient reason can be shown to rebut this assumption (see *Ventura v. Italy*, no. 7438/76, Commission's report of 15 December 1980, Decisions and Reports (DR) 23, p. 91, § 197). Since there is nothing to rebut the assumption in the present case, the relevant period must be regarded as having ended on 19 October 2001, the day of the applicant's release pending trial (see, *mutatis mutandis*, *X v. Ireland*, no. 9429/81, Commission decision of 2 March 1983, DR 32, p. 226). The relevant period to be taken into account is therefore over five years and one month for one level of jurisdiction.

45. The Court observes that the proceedings involved several accused and the charges concerned membership of a terrorist organisation. However, it considers that the complexity of the proceedings does not in itself suffice to justify their considerable length.

46. As to the applicant's conduct, the Court notes that, by absconding following his release pending trial on 19 October 2001, he has also contributed to the length of the proceedings. However, it observes that at the time of his release, the proceedings had already lasted more than five years before the first level of jurisdiction.

47. As to the conduct of the authorities, the Court refers to its considerations under Article 5 § 3 of the Convention above, which led it to find a violation of that provision (paragraph 38 above). Its finding that the

authorities did not conduct the proceedings with the special diligence required of them is likewise valid with respect to the length of the criminal proceedings. Additionally, the Court observes that, following the applicant's release pending trial in the resumed proceedings before the Istanbul State Security Court, there have been lengthy intervals between hearings, with only five hearings being held in two years.

48. Accordingly, it finds that the proceedings against the applicant were not conducted within a "reasonable time". Consequently, there has been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed the sum of 20,000 New Turkish Liras (TRY)¹ in respect of pecuniary damage. He referred in this connection to the excessive length of the criminal proceedings and the time he had spent in detention pending trial, as a result of which he had been unable to work. He also claimed TRY 30,000² in respect of non-pecuniary damage.

51. The Government contested these sums, alleging that there was no causal link between the compensation requested and the alleged violation of the Convention. They argued that the pecuniary and non-pecuniary damage requested by the applicant were out of all proportion to the economic and social realities of the country. The Government pointed out that the applicant had not specified the work he had allegedly been deprived of.

52. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 3,000 for non-pecuniary damage.

1. Approximately EUR 12,266

2. Approximately EUR 18,399

B. Costs and expenses

53. The applicant claimed TRY 28,203³ for the costs and expenses incurred during the proceedings before the domestic authorities and the Court.

54. The Government contested the applicant's claim as being unsubstantiated by any documentation.

55. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant EUR 1,000 in respect of costs and expenses.

C. Default interest

56. 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;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 sums, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) for non-pecuniary damage,
 - (ii) EUR 1,000 (one thousand euros) for costs and expenses,
 - (iii) plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

3. Approximately EUR 17,297

Done in English, and notified in writing on 20 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President