



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

THIRD SECTION

CASE OF GÖKÇE AND DEMİREL v. TURKEY

(Application no. 51839/99)

JUDGMENT

STRASBOURG

22 June 2006

FINAL

22/09/2006

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 Gökçe and Demirel 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 L. CAFLISCH,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN, *judges*,

and Mr V. BERGER, *Section Registrar*

Having deliberated in private on 1 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 51839/99) 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 two Turkish nationals, Mr Caferi Sadık Gökçe and Mr Rıza Demirel (“the applicants”), on 3 June 1999.

2. The applicants, who had been granted legal aid, were represented by Mrs G. Tuncer, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 9 January 2003 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaints concerning the applicants’ ill-treatment in police custody, the length of their detention on remand, their right to a fair hearing within a reasonable time and to presumption of innocence 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. In a letter of 12 July 2005, the Court informed the parties that, in accordance with Article 29 § 3 of the Convention, it would decide on both the admissibility and merits of the application.

THE FACTS

6. The applicants were born in 1975 and 1969 respectively and were detained in Gebze prison at the time of their application to the Court.

7. On 9 March 1995 the applicants were arrested by police officers from the anti-terrorist branch of the Istanbul Security Directorate on suspicion of membership of an illegal armed organisation, namely the DEV-SOL (*Revolutionary Left*).

8. The applicants were allegedly subjected to torture while in police custody. In particular, they were blindfolded and they were not given any food for a certain period of time. They were forced to sign certain statements under duress.

9. While the applicants were in police custody, on an unspecified date, the Istanbul police held a press conference on the arrest of the members of DEV-SOL, including the applicants. The picture of the applicants standing behind a table on which weapons were exhibited was published in a newspaper.

10. On 21 March 1995 the applicants were examined by a medical expert from the Istanbul Forensic Medicine Department, who reported that there were no signs of injury on the applicants' bodies. The doctor noted that Caferi Sadık Gökçe complained of a pain in his shoulder.

11. On the same day, the applicants were brought before the public prosecutor at the Istanbul State Security Court and the 3rd Chamber of the Istanbul State Security Court where Caferi Sadık Gökçe admitted to the charges brought against him and confirmed the accuracy of the statements he had made in custody, whereas Rıza Demirel denied his police statements and denied all the charges against him. The court ordered their detention on remand.

12. On 13 April 1995 the Public Prosecutor at the Istanbul State Security Court filed an indictment against the applicants and several other persons, charging the applicants with membership of an illegal organisation under Article 168 § 2 of the Criminal Code.

13. On 21 September 1995 both applicants maintained before the Istanbul State Security Court that, during their detention, they had been subjected to torture and had been forced to sign statements pre-drafted by the police officers. Subsequently, the Istanbul State Security Court read out the medical reports drafted on 21 March 1995, according to which the applicants did not bear any sign of ill-treatment. On 19 February 1997, 6 February 1998 and 28 April 1999 they repeated their allegation of ill-treatment before the first-instance court.

14. At the end of every hearing the court dismissed the applicants' request to be released pending trial and ordered their detention on remand having regard to the state of the evidence, the nature of the offence, the content of the case file and the duration of their detention on remand.

15. On 11 May 1999 the applicants appealed to the Presidency of the 4th Chamber of the Istanbul State Security Court and requested their release pending trial, arguing that the court's order of detention on remand was groundless. On 12 May 1999 their request was dismissed.

16. On 24 September 1999 the first-instance court ordered the applicants' release pending trial.

17. On 17 December 2003 the Istanbul State Security Court convicted the applicants as charged and sentenced them to twelve years and six months' imprisonment.

18. The applicants appealed.

19. In April 2005 the Court of Cassation quashed the judgment of the first-instance court and remitted the case to the Istanbul Assize Court, since by Law no. 5190 of 16 June 2004, the State Security Courts had been abolished.

20. The proceedings are still pending before the first-instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicants complained under Article 3 of the Convention that they had been subjected to ill-treatment while in police custody.

Article 3 reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

22. The Government asserted that the applicants could not be considered to have exhausted domestic remedies since they had never filed a formal complaint with the public prosecutor with a view to opening a criminal investigation into their allegations of ill-treatment. They further argued that the applicant had failed to seek compensation for their alleged ill-treatment. In the alternative, the Government maintained that the application was submitted too late since the applicants should have applied to the Court within six months following the end of their police custody.

23. As to the merits of the applicants' complaint, the Government contended that the medical reports concerning the applicants concluded that there had been no trace of ill-treatment on the applicants' bodies. They further submitted that the applicants had not complained about the alleged ill-treatment before the public prosecutor and the Istanbul State Security Court on 21 March 1995. The Government therefore concluded that the applicants' allegations of ill-treatment were unsubstantiated.

24. The applicants submitted in reply that the medical reports in question did not reflect the truth as the medical personnel had also been put under pressure by the State authorities at the relevant time. They further maintained that Caferi Sadık Gökçe had actually complained of a pain in his

shoulder before the doctor and yet the applicant had not been taken to a hospital for a more detailed examination.

25. The Court does not consider it necessary to determine whether the applicants in the present case have exhausted domestic remedies and whether the application has been submitted within the six-month time limit, as the application is manifestly ill-founded for the following reasons.

26. The Court recalls at the outset that, in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof “beyond reasonable doubt” (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

27. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar*, cited above, § 283).

28. In the instant case, the applicants complained before the Court of having been tortured without mentioning any details except those of having been blindfolded and deprived of food. Caferi Sadık Gökçe contended before the first-instance court on 21 September 1995 that he was subjected to Palestinian hanging. He did not reiterate this allegation at the later stages of the trial. The Court notes that there are a number of elements in the case which cast doubt on whether the applicants suffered treatment prohibited by Article 3 when they were detained in police custody in the Istanbul Security Directorate.

29. Firstly, the applicants did not bring their allegations of ill-treatment to the attention of the public prosecutor at the Istanbul State Security Court and of the Istanbul State Security Court which heard the applicants on 21 March 1995, immediately after their police custody period ended. It was not until 21 September 1995 that the applicants and their lawyer contended before the Istanbul State Security Court that the applicants had been ill-treated during their police custody. In the face of their allegation of torture, the trial court read out the medical reports, according to which there was no trace of ill-treatment on the applicants’ bodies. While it is true that the applicants reiterated their allegations on 19 February 1997 and 6 February 1998 before the trial court and in their written submissions of 28 April 1999 to the court, there is no material in the case file which would

demonstrate that they maintained their allegations before the Istanbul State Security Court after 28 April 1999.

30. Secondly, the medical reports dated 21 March 1995 revealed no traces of ill-treatment on the applicants' bodies (see paragraph 10 above). The Court is aware of the lack of details in these reports. Nevertheless, it notes that there is no other material in the case-file which could call into question the findings in these reports or add probative weight to the applicants' allegations (see *Sevgin and İnce v. Turkey*, no. 46262/99, § 57, 20 September 2005).

31. In conclusion, the evidence before it does not enable the Court to find beyond all reasonable doubt that the applicants were subjected to ill-treatment.

32. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

33. The applicants complained that their detention on remand exceeded the "reasonable time" requirement as provided in Article 5 § 3 of the Convention, which reads, in so far 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."

34. The Government contested that argument.

A. Admissibility

35. The Court notes that this complaint 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

36. The Government submitted that the State Security Court had not unduly prolonged the applicants' detention on remand. The offence with which the applicants were charged was of a serious nature, and their detention on remand was also necessary to prevent them from absconding. The State Security Court took into consideration the risk of the applicants escaping and removing evidence or traces, and that there has been a genuine public interest for the continued detention of the applicants.

37. The applicants maintained that the grounds given by the Istanbul State Security Court for their continued detention on remand had been insufficient.

38. 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 an applicant in his or her 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).

39. 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).

40. The Court notes that, in the instant case, the period to be taken into consideration began on 9 March 1995, when the applicants were taken into police custody and ended on 24 September 1999, when the applicants were released pending trial. It thus lasted more than four years and six months.

41. During this period, the Istanbul State Security Court considered the applicants' continued detention at the end of each hearing, either on its own motion or upon the request of the applicants. However, the State Security Court ordered the applicants' continued detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of evidence and the duration of detention".

42. The Court takes note of the seriousness of the offence with which the applicants were charged 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 *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 applicants' detention pending trial.

43. Furthermore, 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 the length of the detention of which the applicants complain (see *Demirel v. Turkey*, no. 39324/98, § 59, 28 January 2003, and *Karagöz v. Turkey*, no. 5701/02, § 42, 20 October 2005).

44. The foregoing considerations are sufficient to enable the Court to conclude that the length of the applicants’ detention on remand, which lasted over four years and six months, given the stereotypical reasoning of the first-instance court, has not been shown to be justified.

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

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

A. Fair trial

46. The applicants alleged that the prosecution against them and the judgment of the Istanbul State Security Court had both been based on their statements which had been elicited under torture by the police. They invoked Article 6 of the Convention, which, in relevant part, provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

47. The Government did not make any submissions in this respect.

48. The Court observes that in April 2005 the Court of Cassation quashed the judgment of the first-instance court and remitted the case to the Istanbul Assize Court, since by Law no. 5190 of 16 June 2004, the State Security Courts had been abolished and that the proceedings are still pending before the first-instance court.

49. The Court is consequently not in a position to make an overall examination of the proceedings against the applicants and considers that it cannot speculate either on what the national courts will decide or on what the outcome of a second appeal on points of law might be since that remedy would still be available to the applicants if they were to consider that their trial had ultimately infringed the rights on which they relied before the Court (see *Dikme v. Turkey*, no. 20869/92, § 111, ECHR 2000-VIII).

50. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Reasonable time

51. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

52. The Government contested that argument.

53. The period to be taken into consideration began on 9 March 1995 and has not yet ended. It has thus lasted approximately ten years and ten months for two levels of jurisdiction which have examined the case twice.

1. Admissibility

54. The Court notes that this part of 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.

2. Merits

55. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

56. 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.

57. There has accordingly been a breach of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicants.

C. Presumption of innocence

58. The applicants complained under Article 6 § 2 of the Convention that their right to the presumption of innocence had been violated since, subsequent to their arrest, the police officers had presented them as criminals to journalists and that a recommendation report (*fezleke*) drafted by the Istanbul Security Directorate was included in the case-file.

Article 6 § 2 reads as follows:

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

59. The Government contended that the applicants could not be considered to have exhausted domestic remedies since they had not raised their Convention grievance before the national authorities. They submitted as to the merits of this complaint that Article 6 § 2 did not prevent the authorities from informing the public about criminal investigations in progress.

60. The applicants reiterated their initial submissions.

61. The Court considers that it is not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of Article 6 § 2 of the Convention as this part of the application is inadmissible for the following reasons.

62. The Court reiterates that the rule of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from having to answer for their acts before an international body prior to having had an opportunity to put matters right through their own legal system (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 50).

63. The Court further reiterates that it is sufficient that the complaints intended to be made subsequently before it should have been raised, at least in substance and in compliance with the formal requirements before the national authorities (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

64. The Court notes that, in their written and oral submissions to the domestic courts, the applicants did raise their other Convention grievances but did not complain, either in form or substance, that their right to be presumed innocent had been violated as a result of the press conference organised by the police following their arrest.

65. It follows that the applicants have failed to exhaust domestic remedies and that this part of the application must be rejected as being inadmissible under Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

66. The applicants complained that there were no effective domestic remedies in respect of their allegations of ill-treatment. They invoked Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

67. The Government submitted that as the applicants had not put forward an “arguable claim” for their grievance under Article 3, the

authorities cannot be considered to have failed to fulfil their obligation to provide a domestic remedy as required by Article 13.

68. The applicants submitted that the public prosecutor at the trial court and the court itself had remained completely inactive in the face of their allegations of torture.

69. The Court recalls that Article 13 guarantees a remedy at the national level to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured within the domestic legal order. However, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention (see, *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, § 52).

70. The Court reiterates, on the basis of the evidence adduced in the present case, that it has not been established beyond reasonable doubt that the applicants were subjected to ill-treatment in police custody. (see paragraph 32 above). Having regard to the considerations which led it to conclude that the applicants’ complaint under Article 3 was manifestly ill-founded, the Court considers that the applicants have not presented an “arguable claim” for that grievance which would have required a remedy under Article 13.

71. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed 30,000 euros (EUR) each in respect of non-pecuniary damage. Furthermore, they sought reparation for pecuniary damage they had sustained, but left the amount to the discretion of the Court.

74. The Government disputed these claims.

75. As regards the alleged pecuniary damage sustained by the applicants, the Court observes that they have not produced any document in support of their claim, which the Court, accordingly, dismisses.

76. With regard to the non-pecuniary damage, the Court considers that the applicants may have suffered a certain amount of distress in the

circumstances of the case. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicants also claimed EUR 6,000 for the costs and expenses incurred before the Court.

78. The Government maintained that this claim was excessive.

79. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 applicants, jointly, the sum of EUR 1,500 for costs and expenses for the proceedings before the Court.

C. Default interest

80. 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 complaints concerning the length of the applicants' detention on remand and the criminal proceedings against them 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* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, 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:
 - (i) EUR 10,000 (ten thousand euros) to each applicant in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand and five hundred euros) to the applicants jointly in respect of costs and expenses;

- (iii) any taxes 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President