



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

THIRD SECTION

CASE OF MEHMET GÜNEŞ v. TURKEY

(Application no. 61908/00)

JUDGMENT

STRASBOURG

21 September 2006

FINAL

21/12/2006

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 Mehmet Güneş 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 31 August 2006,

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

PROCEDURE

1 The case originated in an application (no. 61908/00) 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 Mehmet Güneş (“the applicant”), on 23 July 2000.

2. The applicant was represented by Mr E. Kanar, 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 26 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the applicant’s detention on remand and his right to a fair hearing within a reasonable time. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1951 and lives in Turkey.

5. On 16 July 1993 the applicant was taken into police custody by police officers from the anti-terrorist branch of the Istanbul Security Directorate on suspicion of membership in an illegal organisation, the TDP (*Revolutionary Party of Turkey*) and of possessing a false identity card. He was held in police custody until 30 July 1993.

6. On 30 July 1993 he was brought before a judge who ordered his detention on remand. He asserted that he had not signed any statement and claimed that he had been subjected to ill-treatment while in police custody.

7. On 15 September 1993 the Chief Public Prosecutor at the Istanbul State Security Court filed a bill of indictment with the latter charging the applicant under Article 168 § 1 of the Criminal Code with membership of an illegal organisation.

8. On 25 January 2000 the applicant was released from detention.

9. Between 16 July 1993 and 25 January 2000 the Istanbul State Security Court held thirty-six hearings. The applicant requested to be released pending trial several times before the trial court. The Istanbul State Security Court dismissed his request on all occasions, having regard to the state of the evidence, until 25 January 2000.

10. On 26 March 1996 the Istanbul State Security Court requested the Forensic Medical Institute to carry out an analysis as to whether the documents, which were submitted as written evidence, were drafted by the applicant and another co-accused, namely M.A.A..

11. Until 17 February 2004 the trial court postponed the hearings in order to wait for the Forensic Medical Institute's report on the issue and to be informed about the prison that M.A.A had been detained.

12. On 17 February 2004 the Istanbul State Security Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time-limit under Articles 102 and 104 of the Criminal Code had expired.

THE LAW

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

13. 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."

14. The Government contested that argument.

A. Admissibility

15. 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

16. The Government submitted that the State Security Court did not unduly prolong the applicant's detention on remand. The offence with which the applicant was charged was of a serious nature, and his detention on remand was also necessary to prevent him from committing any further offences or from fleeing after having done so. The State Security Court took into consideration the very high risk of the applicant escaping or removing evidence or traces, and there has been a genuine public interest for the continued detention of the applicant, since the offence attributed to him was of a serious nature.

17. The applicant maintained that the Istanbul State Security Court relied on the "nature of the offence, the state of the evidence and the duration of the detention" when it rejected his requests for release pending trial, without having discussed the possibility of his destroying evidence or absconding. The applicant maintained that the grounds given by the Istanbul State Security Court for his continued detention on remand had been insufficient.

18. 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 the applicant in his 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).

19. 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).

20. The Court notes that, in the instant case, the period to be taken into consideration began on 16 July 1993 and ended on 25 January 2000, when the applicant was released. It thus lasted more than six years and six

months. During this period, the Istanbul State Security Court prolonged the applicant's 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".

21. 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; *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.

22. Finally, 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 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 v. Turkey*, no. 39324/98, § 59, 28 January 2003).

23. The foregoing considerations are sufficient to enable the Court to conclude that the length of the applicant's detention on remand, which lasted over six years and six months and eleven days, given the stereotype reasoning of the court, has not been shown to be justified.

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

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

25. The applicant 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 insofar as relevant as follows:

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

26. The Government contested that argument.

A. Admissibility

27. The Court considers that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this part of 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

28. The Government contended that the length of the case was not excessive and that there was no negligence on the part of the national authorities. The case was complex, considering the difficulties in collecting evidence, and the trial court waited for the Forensic Medical Institute's report concerning an analysis as to whether the documents, which submitted as written evidence, were drafted by the applicant.

29. The Court notes that the period to be taken into consideration began on 16 July 1993, when the applicant was taken into police custody, and ended on 17 February 2004, when the Istanbul State Security Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time-limit under Article 102 and 104 of the Criminal Code had expired. The proceedings lasted approximately ten years and seven months before one level of jurisdiction.

30. 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 applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

31. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 45,000 euros (EUR) in respect of pecuniary damage. He further claimed a total of EUR 25,700 for non-pecuniary damage.

34. The Government disputed these claims.

35. As regards the alleged pecuniary damage sustained by the applicant, the Court observes that he has not produced any document in support of his claim. Accordingly, the Court dismisses the applicant's claims in respect of pecuniary damage.

36. With regard to the non-pecuniary damage, the Court considers that the applicant may have suffered a certain amount of distress in the circumstances of the case. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 9,000 under that head.

B. Costs and expenses

37. The applicant also claimed EUR 10,542 for the costs and expenses incurred before the domestic courts and the Court.

38. The Government maintained that only those expenses which were actually and necessarily incurred could be reimbursed. In this connection, they submitted that the applicant and his representative had failed to submit documents showing the costs and expenses.

39. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far 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 to EUR 1,500 covering costs and expenses.

C. Default interest

40. 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 amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand and five hundred euros) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President