



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

SECOND SECTION

CASE OF TUTAR v. TURKEY

(Application no. 11798/03)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Tutar 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 R. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 11798/03) 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 İskender Tutar (“the applicant”), on 21 January 2003.

2. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 7 September 2005 the Court decided to give notice of 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1975 and is currently detained on remand in the Diyarbakır prison.

5. On 10 September 1994 the applicant was arrested and placed in police custody in Diyarbakır on suspicion of being a member of an illegal organisation, namely the Hezbollah.

6. On 4 October 1994 the applicant was brought before the public prosecutor and then the investigating judge. The same day the investigating judge ordered the applicant’s detention on remand.

7. In an indictment dated 24 October 1994, the public prosecutor initiated criminal proceedings against the applicant and twenty seven others, before the Diyarbakır State Security Court, accusing them, *inter alia*, of membership of an illegal armed organisation and of taking part in its activities. The prosecution requested that the applicant be sentenced pursuant to Article 125 of the Criminal Code.

8. On 21 March 2002 the public prosecutor at the Diyarbakır State Security Court filed a new indictment against the applicant and some of his co-accused, charging them with attempting to undermine the constitutional order, under Article 146 of the Criminal Code. On 26 March 2002 the two cases were joined.

9. State Security Courts were abolished by constitutional amendments introduced on 7 May 2004. Subsequently, the applicant's case was resumed before the Diyarbakır Assize Court, where the proceedings are still pending.

10. Between 4 November 1994 and 23 December 2005 the first-instance court held eighty hearings. In the course of the proceedings the court considered the applicant's detention on remand regularly, either on its own motion or upon the request of the applicant and each time it ordered his continued detention on remand, having regard to the nature of the offence, the state of the evidence and the content of the case file.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

11. The Government submitted that the applicant had failed to exhaust domestic remedies as the criminal proceedings against him were still pending.

12. The Court reiterates that the obligation to exhaust domestic remedies requires only that an applicant make normal use of effective and sufficient remedies which are capable of remedying the situation at issue (see *Karashev v. Finland* (dec.), no. 31414/96, ECHR 1999-II).

13. The Court considers that the criminal proceedings against the applicant cannot be regarded as an effective remedy as alleged by the Government since they are not capable of remedying the applicant's Convention grievances.

14. Accordingly, the Court rejects the Government's preliminary objections.

15. 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

16. The applicant complained that his detention on remand, which has lasted almost twelve 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.”

17. The Government contended that the domestic authorities displayed diligence when considering the applicant’s requests for release pending trial. Moreover, they claimed that the seriousness of the crime and the special circumstances of the case justified his continued detention on remand.

18. The Court notes that the pre-trial detention of the applicant began on 10 September 1994 and is still pending. It has thus lasted twelve years.

19. The Court notes from the material in the case file that the first-instance court considered the applicant’s detention on remand at least eighty 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 detention on remand of twelve 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 v. Turkey*, no. 39324/98, § 59, 28 January 2003).

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

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

21. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

22. The Court observes that the proceedings began on 10 September 1994, with the applicant's arrest, and are still pending before the first-instance court. They have thus already lasted twelve years.

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the one in the present application (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Ertürk v. Turkey*, no. 15259/02, 12 April 2005).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings is excessive and fails to meet the "reasonable time" requirement.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 60,000 euros (EUR) in respect of pecuniary damage. Moreover, he sought reparation for the non-pecuniary damage he had sustained but left the amount to the discretion of the Court.

28. The Government contested this claim.

29. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a global sum of EUR 18,000 for pecuniary and non-pecuniary damage.

30. Moreover, the Court notes that the violations of the Convention apparently continue. If so, the Government must ensure that they end as soon as possible.

B. Costs and expenses

31. The applicant did not seek the reimbursement of costs and expenses relating to the proceedings before the Court and this is not a matter which the Court has to examine of its own motion (see *Mehdi Zana v. Turkey*, no. 29851/96, § 25, 6 March 2001).

C. Default interest

32. 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* 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, EUR 18,000 (eighteen thousand euros) in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (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.

Done in English, and notified in writing on 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President