



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

FOURTH SECTION

CASE OF ŞAHİN AND SÜRGEÇ v. TURKEY

(Applications nos. 13007/02 and 13924/02)

JUDGMENT

STRASBOURG

31 October 2006

FINAL

31/01/2007

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 Şahin and Sürgeç v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMEŒ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in two applications (nos. 13007/02 and 13924/02) 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 two Turkish nationals, Mr İbrahim Şahin and Mr Erdoğan Sürgeç (“the applicants”) on 26 February 2002.

2. The applicants were represented by Mr H. Aygün and Mr Ö.U. Kaplan, lawyers practising in Tunceli. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 4 September 2003 the Court joined the applications. It further declared the applications partly inadmissible and decided to communicate the complaint concerning the length of the applicants’ detention in police custody 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 Fourth Section (Rule 52 § 1).

5. In a letter of 24 June 2005, the Court informed the parties that in accordance with Article 29 §§ 1 and 3 of the Convention it would decide on both the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1979 and 1973 respectively and were detained in Malatya prison at the time of the lodging of their applications with the Court.

7. On 1 November 2001 the applicants were arrested and taken into police custody on suspicion of their involvement in the activities of the PKK (The Kurdistan Workers' Party). On 9 November 2001 the Tunceli Magistrates' Court ordered their remand in custody.

8. The public prosecutor at the Malatya State Security Court in his indictment, dated 7 December 2001, accused the first applicant of membership of the PKK and the second applicant of aiding and abetting that organisation. The charges were brought under Articles 168 and 169 of the Criminal Code and Article 5 of Law no. 3713.

9. On 10 September 2002 the Malatya State Security Court convicted the applicants as charged and sentenced the first applicant to twelve years and six months' imprisonment and the second applicant to three years and nine months' imprisonment and a fine of 177,957,000 Turkish liras.

10. The parties did not submit any documents pertaining to the outcome of the criminal proceedings. However, in their submissions on just satisfaction, dated 21 July 2005, the applicants stated that the Malatya State Security Court, pursuant to Law no. 4959 of 29 July 2003 on rehabilitation (*topluma kazandırma*), had decided not to sentence the applicants (*ceza tertibi*) and suspended the proceedings. They further submitted that this decision was upheld by the Court of Cassation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. A description of the relevant domestic law at the material time can be found in *Daş v. Turkey* judgment (no. 74411/01, § 18, 8 November 2005).

THE LAW

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

12. The applicants alleged that they had not been brought promptly before a judge, contrary to Article 5 § 3 of the Convention, which provides 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.”

A. Admissibility

13. The Government asked the Court to dismiss the complaint as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. The Government argued that the applicants could have challenged the length of their detention in police custody by invoking Article 128 of the Code of Criminal Procedure.

14. The Court reiterates that it has already examined and rejected the Government’s preliminary objections in similar cases (see, in particular, *Daş*, cited above, § 21). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned application.

15. In view of the above, the Court rejects the Government’s preliminary objection.

16. 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

17. The Government argued that the length of the applicants’ detention in police custody had been in conformity with the legislation in force at the time. They pointed out that the relevant law had since been amended in accordance with the case-law of the Court.

18. The applicants maintained their allegations.

19. The Court notes that the applicants’ detention in police custody lasted eight days. It reiterates that, in the case of *Brogan and Others v. the United Kingdom* (judgment of 29 November 1988, Series A no. 145 B, pp. 33-34, § 62), it held that detention in police custody which

had lasted four days and six hours without judicial control fell outside the strict time constraints of Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism (see *Brogan and Others*, cited above, pp. 33-34, § 62).

20. Even supposing that the activities of which the applicants stood accused were serious, the Court cannot accept that it was necessary to detain them for eight days without bringing them before a judge or other officer authorised by law to exercise judicial power.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. In their observations on just satisfaction, dated 21 July 2005, the applicants complained under Article 6 of the Convention about the length of their detention on remand.

23. The Court considers that this complaint falls under the scope of Article 5 § 3 of the Convention.

24. The Court observes that the applicants' remand in custody ended on 10 September 2002 when the Malatya State Security Court convicted them as charged. It also notes that there are no documents in the case-file indicating that the applicants had been detained on remand after this date. Accordingly, the Court finds that this complaint either relates to events which occurred more than six months before its date of introduction with the Court on 21 July 2005, or remains unsubstantiated. It therefore rejects this complaint in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants claimed, in total, 19,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the amount.

28. Having regard to its case law, and making its assessment on an equitable basis, the Court awards the applicants, jointly, EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicants also claimed 13,600 new Turkish liras (YTL) (approximately EUR 8,427) for representation fees and EUR 2,400 for costs and expenses incurred before the domestic courts and before the Court. In support of their claims, the applicants submitted a schedule of costs prepared by their representatives and the Tunceli Bar Association's recommended minimum fees list for 2005. However, they did not submit any receipts.

30. The Government contested the amounts.

31. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

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 complaint concerning the failure to bring the applicants promptly before a judge or other officer authorised by law to exercise judicial power admissible and the remainder of the applications inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to 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 5,000 (five thousand euros) in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
- (iii) any tax 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;

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

Done in English, and notified in writing on 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President