



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

FOURTH SECTION

**CASE OF RESUL SADAK AND OTHERS v. TURKEY**

*(Application no. 74318/01)*

JUDGMENT

This version was rectified on 3 April 2007  
under Rule 81 of the Rules of the Court

*This judgment was revised in accordance with Rule 80 of the Rules of Court  
in a judgment of 8 January 2008*

STRASBOURG

5 December 2006

**FINAL**

***05/03/2007***

*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 Resul Sadak and Others v. Turkey,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMESEN,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 14 November 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 74318/01) 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 twelve Turkish nationals, Mr Resul Sadak, Mr Nihat Osal, Mr Mehmet Çakar, Mr Rustem Bayar<sup>1</sup>, Mr Tahir Kutlu, Mr Cengiz Balık, Mr İzzet Belge, Mr Abdurrazak İnan<sup>2</sup>, Mr Mehmet Temelkuran, Mr Mehmet Nezir Ayan, Mr Yakup Uyar and Mr Erdal Güler (“the applicants”), on 1 April 2001.

2. The applicants were represented by Mr T. Elçi, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 3 November 2005 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the applicants’ right to be brought promptly before a judge. 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.

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<sup>1</sup> Rectified on : The applicant’s name read “Rüstem Bayar” in the former version of the judgment.

<sup>2</sup> Rectified on : The applicant’s name read “Abdurrezak İnan” in the former version of the judgment.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. At the time of the events giving rise to the application, Mr Resul Sadak was the provincial leader and the other applicants were members of the Peoples' Democracy Party (*Halkın Demokrasi Partisi*, hereinafter "HADEP") in Şırnak, which was a province in the State of Emergency region.

5. On 23 September 2000 Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar went to Batman in order to participate in the Batman Provincial Congress of HADEP in two cars belonging to Yakup Uyar and Erdal Güler. On their way back to Şırnak from Batman, they were stopped in Düzova village, in Cizre, and arrested by gendarmerie officers. The applicants were then taken to the Şırnak provincial gendarmerie command.

6. On 27 September 2000 at 2 p.m. Erdal Güler was taken into custody. He was kept in custody until 11 a.m. on 1 October 2000.

7. On 1 October 2000 the applicants were brought before the Şırnak public prosecutor and the Şırnak Magistrates' Court (*sulh ceza mahkemesi*). On the same day, the Şırnak Magistrates' Court ordered that Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Erdal Güler be detained on remand and that Yakup Uyar be released.

8. Subsequently, criminal proceedings were brought against the applicants on charges of aiding and abetting the PKK contrary to Article 169 of the Criminal Code and Article 5 of Law no. 3713, and illegal possession of firearms and explosives contrary to Article 264 § 5 of the Criminal Code and Article 13 § 2 of Law no. 6136.

9. On 12 December 2000 the Diyarbakır State Security Court ordered the applicants' release pending trial.

10. In 2002 and 2003 the applicants were acquitted of the charges against them.

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## II. RELEVANT DOMESTIC LAW

11. At the material time Article 16 of Law no. 2845 on the Establishment and Rules of Procedures of State Security Courts provided:

“Any person arrested in connection with an offence within the jurisdiction of State Security Courts shall be brought before a judge and questioned within forty-eight hours at the latest, not including the time needed to convey the detainee to the judge.

If the offence is a joint one committed by three or more persons, this period can be prolonged for up to four days by a written order of the public prosecutor owing to the difficulties in collecting evidence or to the number of perpetrators, or for similar causes. If the investigation is not concluded within this period, it can be prolonged for up to seven days upon the request of the public prosecutor and the decision of the judge.

The period of seven days referred to in the second paragraph can be prolonged for up to ten days upon the request of the public prosecutor and by decision of the judge in respect of persons arrested in regions where a state of emergency has been declared in accordance with Article 120 of the Constitution.

...”

12. At the material time, according to Article 128 of the Code of Criminal Procedure, any person who was arrested and/or in respect of whom a prosecutor made an order for his or her continued detention, could challenge that measure before the appropriate district judge and, if successful, be released.

13. Article 1 of Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained provides:

“Compensation shall be paid by the State in respect of all damage sustained by persons:

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time allowed by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time allowed for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being arrested or detained in accordance with the law, are not subsequently committed for trial ..., or are acquitted or discharged after standing trial;

(7) who have been sentenced to a term of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only...”

## THE LAW

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

14. The applicants complained under Article 5 § 3 of the Convention that the length of their detention in custody was excessive.

#### **A. Admissibility**

##### *1. The parties' submissions*

15. The Government submitted that the application should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention. The Government argued that, pursuant to Article 128 of the Code of Criminal Procedure, the applicants could have challenged the length of their detention in custody. They further maintained that the applicants could have sought compensation pursuant to Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained.

16. The applicants argued that the remedies suggested by the Government were ineffective. They submitted that, since the length of their detention in custody had been in conformity with the domestic law applicable at the time of their arrest, any application under Article 128 of the Code of Criminal Procedure or the provisions of Law no. 466 would have been useless.

##### *2. The Court's assessment*

#### **a. As regards the applicant Erdal Güler**

17. The Court does not consider it necessary to determine whether Erdal Güler has exhausted domestic remedies, as his complaint is manifestly ill-founded for the following reason.

18. The Court notes that, according to the documents submitted to the Court, Erdal Güler was taken into custody at 2 p.m. on 27 September 2000 by officers from the Şırnak provincial gendarmerie command and left the gendarmerie command at 11 a.m. on 1 October 2000. The Court observes that the period in question is less than ninety-six hours.

19. Having regard to its jurisprudence in similar cases, and bearing in mind the context in which he was detained, the Court considers that the length of Erdal Güler's detention in custody does not contravene the requirements of Article 5 § 3 of the Convention since he was brought before a judge less than four days after his arrest (see *Çelik and İmret v. Turkey* (dec.), no. 44093/98, 26 September 2000).

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

**b. As regards the applicants Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar**

21. The Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, for example, *Öcalan v. Turkey* [GC], no. 46221/99, §§ 66-71, ECHR 2005-..., and *Bulduş v. Turkey*, no. 64741/01, §§ 10-14, 22 December 2005). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence.

22. Consequently, the Court rejects the Government's preliminary objection. It further notes that this part of the application is not inadmissible on any other grounds and must, therefore, be declared admissible.

## **B. Merits**

23. The applicants complained that they had been held in custody for an excessive length of time without being brought before a judge or other officer authorised by law to exercise judicial power as provided in 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 ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

24. The Government argued that the length of the applicants' detention in custody was in conformity with the legislation in force at the time. Given that the relevant law has since been amended in accordance with the Court's jurisprudence, the applicants' allegation was groundless.

25. The Court notes that the applicants' detention in Şırnak provincial gendarmerie command lasted eight days. It reiterates that, in the case of *Brogan and Others v. the United Kingdom*, it held that detention in police

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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 (judgment of 29 November 1988, Series A no. 145 B, pp. 33-34, § 62).

26. Even though the investigation of terrorist offences, as was relied on by the Government in this case, presents the authorities with special problems, the Court cannot accept that it was necessary to detain the applicants for eight days without judicial intervention.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed 10,000 euros (EUR) and EUR 5,000 in respect of non-pecuniary and pecuniary damage respectively.

30. The Government contested the amounts requested by the applicants and proposed that the finding of a violation would constitute in itself sufficient compensation.

31. 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.

32. With regard to non-pecuniary damage, the Court considers that the applicants have sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar EUR 1,800 each.

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## B. Costs and expenses

33. The applicants also claimed EUR 5,300 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

34. The Government contested this claim. They maintained that only expenses actually incurred can be reimbursed.

35. 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 Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar, jointly, the sum of EUR 1,000 for costs and expenses for the proceedings before the Court.

## C. Default interest

36. 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 part of the application concerning Erdal Güler inadmissible;
2. *Declares* the remainder of the application admissible in respect of the applicants Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

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4. *Holds*

(a) that the respondent State is to pay Resul Sadak, Nihat Osal, Mehmet Çakar, Rustem Bayar<sup>1</sup>, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrazak İnan<sup>2</sup>, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar, 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 1,800 (one thousand eight hundred euros) each in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand euros), 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 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President

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