



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

FOURTH SECTION

CASE OF ÖZÇELİK v. TURKEY

(Application no. 56497/00)

JUDGMENT

STRASBOURG

20 February 2007

FINAL

20/05/2007

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 Özçelik 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,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 30 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 56497/00) 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 Osman Özçelik (“the applicant”), on 19 January 2000.

2. The applicant was represented by Mr M.N. Özmen, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 2 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Ankara. He was the deputy chairman of the pro-Kurdish HADEP (*Halkın Demokrasi Partisi* – People’s Democracy Party) prior to the events giving rise to the present application.

5. On 21 July 1999 the applicant was taken into custody by police officers from the anti-terror branch of the Ankara Security Directorate. According to the arrest protocol (*yakalama tutanağı*) signed by four police

officers and the applicant, a search warrant had been issued in respect of the applicant. When the officers saw the applicant, they asked him to show his identity card. The applicant however attempted to escape.

6. On 23 July 1999 the deputy director of the Ankara Security Directorate sent a letter to the public prosecutor at the Ankara State Security Court requesting that the applicant's custody period be extended. The deputy director maintained, *inter alia*, that the applicant had been taken into custody on 21 July 1999 during the course of a police operation carried out against the PKK and that the police had not yet completed the detailed questioning of the applicant and the gathering of evidence.

7. The public prosecutor referred the security directorate's request to the Ankara State Security Court. On the same day, the single judge of the State Security Court decided to extend the custody period for three days starting from 24 July 1999, including 26 July 1999. The applicant did not appear before the judge.

8. On 25 July 1999 two police officers from the anti-terror branch of the Ankara Security Directorate took statements from the applicant. The applicant was questioned, in particular, about his statements made in several television programmes, broadcast on MED-TV, a pro-Kurdish channel, in which he had taken part in his capacity as deputy chairman of the HADEP.

9. On 27 July 1999 the applicant was brought before the public prosecutor at the Ankara State Security Court, who questioned him about his statements during the same television programmes. Subsequently, the public prosecutor requested the Ankara State Security Court to order the applicant's detention on remand.

10. On the same day, the single judge at the Ankara State Security Court ordered the applicant's release from detention, having regard to the nature of the alleged offence and the state of the evidence.

11. On 9 August 1999 the public prosecutor requested that the Ankara State Security Court file a bill of indictment, charging the applicant with aiding and abetting members of the PKK on account of his statements made during the television programmes shown on MED-TV.

12. On 21 December 2000 new legislation (Law no. 4616) on the suspension of proceedings and the execution of sentences regarding offences committed before 23 April 1999 came into force.

13. On 25 June 2002 the Ankara State Security Court decided to defer the imposition of a final sentence on the applicant, pursuant to Law no. 4616. The court held, under Article 1 § 4 of the same law, that the criminal proceedings against him would be suspended and a final sentence would be imposed should he be convicted of a similar offence within five years of this decision.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

15. The applicant complained under Article 5 § 1 (c) of the Convention that he had been unlawfully deprived of his liberty as there had been no reasonable suspicion for his arrest. Article 5 § 1 (c) provides as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

16. The Government did not comment on this complaint.

17. The Court reiterates that having a “reasonable suspicion” presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (*Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32). However, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (*Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27 § 55).

18. The Court observes that the applicant was arrested during the course of a police operation carried out against the PKK. According to the arrest protocol, which was signed by the applicant, a search warrant had been issued against him and the applicant had attempted to escape when the police officers asked him to show his identity card.

19. The Court considers that the aforementioned elements are sufficient to support the conclusion that there was “reasonable suspicion” for the applicant’s arrest. The fact that the proceedings against him were subsequently suspended does not of itself call into question the existence of a reasonable suspicion within the meaning of Article 5 § 1 (c).

20. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

21. The applicant complained that he had been held in police custody for seven days without being brought before a judge or other officer authorised by law to exercise judicial power. He further complained under Article 13 of the Convention that he had no remedy in domestic law to challenge the lawfulness of his detention in police custody.

The Court considers that the applicant's complaint under Article 13 should be examined from the standpoint of Article 5 § 4 of the Convention. Article 5 §§ 3 and 4 of the Convention read as follows:

“3. 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.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

22. The Government submitted that the application should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention. They argued that the applicant had failed to invoke Article 5 of the Convention before the domestic authorities and to challenge the decision to extend his custody period. The Government further maintained that the applicant could have sought compensation under Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained.

23. The Court notes 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 *Daş*, cited above, § 18). The Court finds no particular circumstances in the instant case, which would require it to depart from this jurisprudence.

24. Consequently, the Court rejects the Government's preliminary objections.

25. 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.

B. Merits

1. *The applicant's complaint under Article 5 § 3 of the Convention*

26. The Government argued that the length of the applicant's detention in police custody was in conformity with the legislation in force at the material time. They further maintained that the relevant domestic law had been amended in accordance with the Court's jurisprudence.

27. The applicant reiterated his allegations.

28. The Court has already accepted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 33-34, § 61; *Murray*, cited above, § 58; *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2653, § 41). This does not mean, however, that the authorities have *carte blanche* under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence (see, among others, *Murray*, cited above, § 58).

29. The Court notes that the applicant was taken into police custody on 21 July 1999 and released on 27 July 1999. His detention in police custody thus lasted at least six days. It reiterates that in the *Brogan and Others* case it held that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict constraints as to time laid down by 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, p. 33, § 62).

30. Even supposing that the activities of which the applicant stood accused were linked to a terrorist threat, the Court cannot accept that it was necessary to detain him for six days without being brought before a judge.

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

2. *The applicant's complaint under Article 5 § 4 of the Convention*

32. The Government contended that Article 128 of the Code of Criminal Procedure, which was in force at the material time, provided an effective remedy to challenge the lawfulness of detention in police custody.

33. The applicant reiterated his allegations.

34. The Court reiterates that in several cases raising similar questions to those in the present case, it rejected the Government's aforementioned submission and found a violation of Article 5 § 4 of the Convention (see, among others, *Öcalan*, cited above, § 76 and, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, § 54). The Court finds

no particular circumstances in the instant case, which would require it to depart from its findings in the aforementioned cases.

35. In conclusion, the Court holds that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

36. The applicant complained under Article 6 § 2 of the Convention that his right to the presumption of innocence had been violated since, subsequent to his arrest, there had been news reports in newspapers, on radio stations and on television channels, in which he had been presented as a criminal.

37. The Government did not comment on this complaint.

38. The Court observes that the applicant did not submit any materials in support of his complaint. Nor did he allege that the authorities had presented him to the media as a criminal. It therefore considers that the applicant has failed to substantiate his complaint under this head.

39. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLES 14 AND 18 OF THE CONVENTION

40. The applicant complained under Article 14 of the Convention, in conjunction with Articles 5 and 6 of the Convention, that he had been discriminated against on the basis of his ethnic origin. He further alleged under Article 18 of the Convention that the respondent State had applied restrictions on the exercise of his rights in violation of the Convention.

41. The Government did not address these issues.

42. The Court notes that the applicant has not substantiated his complaints under these provisions.

43. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 3,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

46. The Government contested these claims.

47. The Court does not discern any causal link between the violations found and the pecuniary damage alleged. It therefore rejects this claim.

48. On the other hand, it accepts that the applicant suffered non-pecuniary damage such as distress resulting from his detention for six days without the opportunity to challenge its lawfulness, which cannot be sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed EUR 6,837 for the costs and expenses incurred before the Court.

50. The Government submitted that these claims were unsubstantiated. They argued that no documents had been provided by the applicant to prove his claims.

51. 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 (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). 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 sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

52. 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 failure of the authorities to bring the applicant promptly before a judge and his inability to challenge the lawfulness of his detention 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 5 § 4 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 plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
 - (b) that from the expiry of the abovementioned 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 20 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President