



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

SECOND SECTION

CASE OF BAZ AND OTHERS v. TURKEY

(Application no. 76106/01)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

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 Baz and Others v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĒ, *judges*,

and Mrs S. DOLLĒ, *Section Registrar*,

Having deliberated in private on 3 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 76106/01) 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 six Turkish nationals, Mr Abdulkadir Baz, Mr Sedrettin Dinar, Mr Mahrem Bulut, Mr Mehmet Akbalık, Mr Tahsin Aktaş and Mr Yusuf Sebuk (“the applicants”), on 14 September 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 purpose 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1984, 1970, 1964, 1958, 1962 and 1961 respectively and live in Diyarbakır.

5. The applicants were active members of HADEP¹ in Diyarbakır at the time of the events giving rise to the present application.

6. In 2001, on various dates, the applicants were arrested and taken into police custody on suspicion of their involvement in the activities of an illegal armed organisation, namely the PKK (the Kurdistan Workers' Party).

7. The periods spent by the applicants in police custody are as follows:

Name	Date(s) of arrest	Date(s) of release
Abdulkadir Baz	12 August 2001	21 August 2001
Sedrettin Dinar	12 August 2001	21 August 2001
Mahrem Bulut	4 May 2001 12 August 2001	7 May 2001 21 August 2001
Mehmet Akbalık	14 June 2001 12 August 2001	15 June 2001 21 August 2001
Tahsin Aktaş	12 August 2001	21 August 2001
Yusuf Sebuk	19 August 2001	21 August 2001

8. According to official documents, Mahrem Bulut and Mehmet Akbalık were arrested for the first time on the basis of statements of Mr S.D., Mr M.A., Mr B.E., Mr H.I. and Mr T.G., who alleged that the applicants were involved in PKK-related activities. As to the applicants' arrest in August 2001, the case file reveals that the police had been informed that there would be illegal violent acts and demonstrations to celebrate the anniversary of the beginning of the armed struggle of the PKK and that the names of the applicants came up as possible organisers.

9. Subsequent to these events, criminal proceedings were instigated against the applicants for membership of the PKK by the public prosecutor at the Diyarbakır State Security Court, with the exception of Sedrettin Dinar and Tahsin Aktaş.

10. On 11 June 2002 the Diyarbakır State Security Court acquitted Abdulkadir Baz and Yusuf Sebuk of the charges against them. The criminal proceedings against Mahrem Bulut and Mehmet Akbalık were pending at the time of their application to the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

1. Halkın Demokrasi Partisi-Peoples' Democracy Party.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

12. The applicants complained that there was no reasonable suspicion to justify their arrest and detention. They further complained that they had been held in police custody for an excessive period of time without being brought before a judge or other officer authorised by law to exercise judicial power. The applicants relied on Article 5 §§ 1 (c) and 3 of the Convention which, in so far as relevant, reads 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; ...

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.”

A. Admissibility

13. The Government asked the Court to dismiss the application for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They argued that the applicants failed to raise the substance of their complaints before the domestic courts and, in particular, to challenge the legality and length of their detention in custody pursuant to Article 128 of the Code of Criminal Procedure.

14. The applicants disputed the Government's argument.

15. As regards the applicants' complaint under Article 5 § 1, the Court considers it unnecessary to determine whether the applicants have exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention, since this part of the application is in any event inadmissible for the following reasons.

16. The Court reiterates that the reasonable suspicion referred to in Article 5 § 1 (c) of the Convention does not mean that the suspected person's guilt must at that stage be established. It is precisely the purpose of the investigation that the reality and nature of the offences laid against the accused should definitely be proved (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55). Sub-paragraph (c) of Article 5 § 1 does not even presuppose that the police

should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody (see *Erdagöz v. Turkey*, judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2314, § 51).

17. In the instant case the Court notes that the arrest of Mahrem Bulut and Mehmet Akbalık, in May and June 2001 respectively, was prompted by the receipt of statements pertaining to their involvement in PKK related activities. As regards the applicants' arrest and custody in August 2001 the Court observes that it was also prompted by the receipt of information that the applicants might take part in organising violent demonstrations to celebrate the anniversary of the beginning of the armed struggle of the PKK.

18. In these circumstances, the Court is of the opinion that the aforementioned elements are sufficient to support the conclusion that there was "reasonable suspicion" to justify the applicants' arrest. It further considers that the fact that no criminal proceedings were instigated as regards some applicants and that some of the others were eventually acquitted of the charges against them, does not of itself call into question the existence of a reasonable suspicion within the meaning of Article 5 § 1 (c). It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

19. As to the applicants' complaint under Article 5 § 3, 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 aforementioned application.

20. In view of the above, the Court rejects the Government's preliminary objection under this head.

21. However, the Court finds that the detention periods of Mahrem Bulut in May (three days), Mehmet Akbalık in June 2001 (one day) and Yusuf Sebuk in August 2001 (two days) can be considered compatible with the promptness requirement of Article 5 § 3 (see, amongst others, *Ayaz and Others v. Turkey* (dec.), no. 11804/02, 6 June 2000). It follows that the complaints by these three applicants must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

22. Finally, the Court notes that the complaint relating to the length of detention in police custody of Mr Baz, Mr Dinar, Mr Bulut, Mr Akbalık and Mr Aktaş in August 2001 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that this complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The Government argued that the length of the applicants' detention in police custody was 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.

24. The applicants maintained their allegations.

25. The Court notes that the applicants' detention in police custody lasted ten 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 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.

26. 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 ten days without bringing them before a judge or other officer authorised by law to exercise judicial power.

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 each claimed 7,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

30. The Government contested the amounts.

31. The Court observes that the applicants failed to substantiate their claims in respect of pecuniary damage; it therefore rejects them. However, deciding on an equitable basis, it awards EUR 3,000 each to Mr Baz, Mr Dinar, Mr Bulut, Mr Akbalık and Mr Aktaş for non-pecuniary damage.

B. Costs and expenses

32. The applicants also claimed EUR 5,225 for the costs and expenses incurred both before the domestic courts and before the Court.

33. The Government contested the amount.

34. According to the Court's case-law, an applicant is entitled to reimbursement of 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, jointly, to Mr Baz, Mr Dinar, Mr Bulut, Mr Akbalık and Mr Aktaş for the proceedings before the Court.

C. Default interest

35. 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 length of detention in police custody of Mr Baz, Mr Dinar, Mr Bulut, Mr Akbalık and Mr Aktaş in August 2001 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*
 - (a) that the respondent State is to pay, 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 the national currency of the respondent State at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) each to Mr Baz, Mr Dinar, Mr Bulut, Mr Akbalık and Mr Aktaş in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), jointly, to Mr Baz, Mr Dinar, Mr Bulut, Mr Akbalık and Mr Aktaş, in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;

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

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President