



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

SECOND SECTION

CASE OF DURSUN v. TURKEY

(Application no. 17765/02)

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 Dursun 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. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLĖ, *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. 17765/02) 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 a Turkish national, Ali Dursun (“the applicant”), on 18 February 2002.

2. The applicant was represented by Mrs F. Karakaş Doğan, a lawyer practising in İstanbul. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 3 March 2006 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 1969 and lives in İstanbul.

5. On 18 July 1992 the applicant was arrested and taken into custody by police officers at the İstanbul Security Directorate on suspicion of membership of an illegal organisation.

6. On 3 August 1992 the applicant was brought before the public prosecutor at the İstanbul State Security Court. On the same day, he was

also brought before a judge at the İstanbul State Security Court who ordered his remand in custody.

7. On 30 September 1992 the public prosecutor at the İstanbul State Security Court filed an indictment against the applicant and sixteen other co-accused and requested the applicant's conviction under Article 125 of the Criminal Code for his activities aimed at breaking up the unity of the State and removing part of the national territory from the State's control.

8. The first hearing, held before the İstanbul State Security Court on 23 October 1992, in the applicant's absence, was taken up with procedural matters, such as the measures to be taken for securing the presence of the accused.

9. Between 23 October 1992 and 11 April 2003, the İstanbul State Security Court held hearings at regular intervals. On 26 November 1992 the first-instance court decided to join another case against the applicant to the proceedings. It further decided to join to the proceedings against the applicant several other cases brought against other persons who were also accused of membership of the same organisation. At the end of each hearing, the İstanbul State Security Court considered releasing the applicant pending trial both *ex officio* as well as upon his requests. At each hearing, the court, taking into account the content of the case file and the state of the evidence, decided to prolong the applicant's remand in custody.

10. On 11 April 2003 the İstanbul State Security Court convicted the applicant as charged and sentenced him to life imprisonment.

11. On 7 June 2004 the Court of Cassation quashed the judgment of the first instance court.

12. Subsequent to promulgation of Law no. 5190 on 16 June 2004, which abolished the State Security Courts, the İstanbul Assize Court acquired jurisdiction over the applicant's case.

13. On 30 December 2004 the İstanbul Assize Court released the applicant pending trial.

14. According to the information available in the file, the case is apparently still pending on the date on which the present judgment was adopted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 3, 4 AND 5, ARTICLE 6 § 2 AND ARTICLE 13 OF THE CONVENTION

15. The applicant complained that the length of his remand in custody was unreasonably long, and that his requests for release pending trial

received no serious consideration by the first-instance court. He invokes Articles 5 §§ 3, 4 and 5, 6 § 2 and 13 of the Convention.

16. The Court considers that this complaint should be examined from the standpoint of 5 § 3 alone, which reads:

“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.”

A. Admissibility

17. 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

18. 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.

19. The applicant maintained his allegations.

20. The Court reiterates that it falls in the first place to the domestic judicial authorities to ensure that, in a given case, the detention of an accused person pending trial does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions on the applications for release. It is primarily on the basis of the reasons given in these decisions, and of the established facts mentioned by the applicants in their appeals, that the Court must determine whether or not there has been a violation of Article 5 § 3 of the Convention (see *Sevgin and İnce v. Turkey*, no. 46262/99, § 61, 20 September 2005).

21. The persistence of a reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the validity of the continued detention but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty (see, among other authorities, *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001, and *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

22. In the instant case, the Court notes that there were two periods of pre-trial detention. The first period began on 18 July 1992 with the applicant's arrest and ended on 11 April 2003, the date of the judgment of the İstanbul Assize Court. From that point on, and until the Court of Cassation's decision of 7 June 2004, the applicant was detained "after conviction by a competent court", which falls within the scope of Article 5 § 1 (a) of the Convention. The second period began on 7 June 2004 and ended on 30 December 2004 when the applicant was released pending trial. It thus lasted approximately eleven years and three months in total (see, in particular, *Solmaz v. Turkey*¹, no. 27561/02, §§ 23-36, 16 January 2007). During this time, the first-instance court considered the applicant's continued detention at the end of each hearing, either on its own motion or upon the request of the applicant. However, the Court notes from the material in the case file that the State Security Court ordered the applicant's continued detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of the evidence".

23. The Court takes note of the seriousness of the offence attributed to the applicant and the severity of the relevant punishment. However, it recalls that the danger of absconding cannot solely be assessed on the basis of the severity of the sentence risked, but must be analysed with reference to a number of other relevant additional elements, which may either confirm the existence of such a danger or make it appear so slight that it cannot justify detention pending trial (see *Muller v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, § 43, and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 43). In this regard, the Court notes the lack of such sufficient reasoning in the domestic court's decisions to prolong the applicant's remand in custody.

24. Finally, although, in general, the expression "the state of the 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 the length of the detention of which the applicant complains (see *Letellier*, cited above; *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).

25. The foregoing considerations are sufficient to enable the Court to conclude that the length of the applicant's pre-trial detention, which lasted, in total, approximately eleven years and three months, has exceeded the reasonable-time requirement.

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

¹ The judgment is not final yet.

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

27. The applicant complained that the length of the criminal proceedings exceeded the “reasonable time” requirement under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ...any criminal charge against him, everyone is entitled to a...hearing within a reasonable time by [a] ...tribunal...”

A. Admissibility

28. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, as the criminal proceedings against him were still pending. They further maintained that the applicant failed to raise the substance of his complaint before the domestic courts.

29. The applicant disputed the Government's arguments.

30. The Court reiterates that it has already examined and rejected the Government's similar objections in previous cases (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005, and *Tutar v. Turkey*, no. 11798/03, §§ 12-14, 10 October 2006). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned applications. It therefore rejects the Government's objections under this head.

31. Moreover, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

32. The Government disputed that the length of the proceedings were unreasonably long.

33. The applicant maintained his allegations.

34. The Court observes that the period to be taken into consideration began on 18 July 1992, when the applicant was arrested and taken into police custody. According to the information in the case file, the case has apparently not yet ended. It has already thus lasted more than fourteen years and eight months.

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, in particular, *Pakkan v. Turkey*, no. 13017/02, § 44, 31 October 2006).

36. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

37. There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

38. The applicant initially complained that he was discriminated against because he was charged with crimes committed against the State in breach of Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

39. The Court has examined the applicant's allegation in the light of the evidence submitted to it and considers it unsubstantiated. It follows that this part of the application should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 3,000 euros (EUR) in respect of pecuniary and EUR 22,000 for non-pecuniary damages. In support of his pecuniary damage claims, which included the expenses incurred by his relatives and lawyers during his incarceration, the applicant submitted a number of bus and ferry ticket receipts.

42. The Government contested the amounts.

43. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed EUR 5,800 for the costs and expenses incurred before the Court. In support of his claim, the applicant submitted the İstanbul Bar Association's recommended minimum fees list for 2006.

45. The Government contested the amount.

46. 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 considers it reasonable to award the sum of EUR 1,000 under this head.

C. Default interest

47. 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 the applicant's detention pending trial and the length of the criminal proceedings 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 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, the following sums, to be converted into new Turkish liras at the rate applicable at the date of settlement;
 - (i) EUR 12,000 (twelve thousand euros) for non-pecuniary damage,
 - (ii) EUR 1,000 (one thousand euros) for costs and expenses,
 - (iii) plus any tax that may be chargeable;
 - (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 applicant's 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