



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

THIRD SECTION

CASE OF ÖZDEN BİLGİN v. TURKEY

(Application no. 8610/02)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Özden Bilgin v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BİRSAN,
Mr R. TÜRMEŖ,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. Quesada, Section Registrar,

Having deliberated in private on 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 8610/02) 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, Ms Özden Bilgin (“the applicant”), on 12 November 2002.

2. The applicant was represented by Mr E. Kanar and Mrs Y. Başara, lawyers practising in İstanbul. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 7 July 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1959 and lives in İstanbul.

5. On 17 September 1993 the applicant was arrested together with four other suspects in a shop and taken into custody by police officers at the İstanbul Security Directorate on suspicion of membership of an illegal armed organisation. The police found illegal documents, one Kalashnikov rifle, two automatic guns and five other guns in the premises.

6. On 1 October 1993 the applicant was brought before the public prosecutor at the İstanbul State Security Court. On the same day, she was also brought before a judge at the İstanbul State Security Court who ordered her remand in custody.

7. On 31 December 1993 the public prosecutor at the İstanbul State Security Court filed a bill of indictment against the applicant and requested her conviction under Article 146 § 1 of the Criminal Code and Article 5 of Law no. 3713. The applicant was accused of taking part in a number of events, i.e. bombings of shops and cars, aggravated theft and causing bodily injury to third persons.

8. On 21 March 1994 the İstanbul State Security Court commenced the trial of the applicant together with twenty-three co-accused.

9. In the meantime, another trial against the applicant before the İstanbul Martial Law Court was pending.

10. In the course of the criminal proceedings, at the end of each hearing, the İstanbul State Security Court considered releasing the applicant pending trial both *ex officio* as well as upon her requests. At each hearing, the court taking into account the nature of the offence, the state of the evidence and the content of the case-file, decided to prolong the applicant's remand in custody.

11. Meanwhile, on 17 November 2000, the applicant's lawyer challenged his client's continued detention before the district court. He submitted, *inter alia*, that his client had been detained for seven years and two months and that there was no danger that she could destroy the evidence, which had all been submitted to the case file, or that she would abscond. The District Court dismissed his request on 20 November 2000 on the same grounds as before, namely "having regard to the nature of the offence, the state of the evidence and the content of the case file".

12. On 17 December 2003 the İstanbul State Security Court convicted the applicant as charged and sentenced her to life imprisonment.

13. The applicant appealed.

14. On 1 April 2005 the Court of Cassation quashed the judgment of the first instance court.

15. 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. The case is still pending before this court.

16. On 19 July 2005 the applicant's lawyer challenged his client's continued detention before the District Court. The latter dismissed the request on 22 July 2005 on similar grounds, namely "having regard to the nature of the offence, the state of the evidence and the content of the case file".

17. On 21 December 2005 the applicant was released pending trial.

THE LAW

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

18. The applicant complained that the length of her detention both in police custody and on remand exceeded the “reasonable time” requirement of 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 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

19. The Government maintained under Article 35 § 1 of the Convention that the application must be rejected for non-exhaustion of domestic remedies or, alternatively, for failure to comply with the six-month rule. Under the first limb of their objections, the Government pointed out that the criminal proceedings against the applicant were still pending. As regards the second limb of their objections, the Government argued, firstly, that the applicant should have lodged her complaint regarding the length of her detention in police custody within six months following the date on which she was remanded in custody, i.e. on 1 October 1993. Secondly, they suggested that the applicant should have lodged her complaint pertaining to the length of her remand in custody within six months following the date on which the District Court ruled on the applicant's request for release, i.e. on 20 November 2000.

20. The applicant disputed the Government's arguments.

21. As regards the complaint concerning the length of the applicant's remand in custody, the Court reiterates that it has already examined and rejected the Government's similar objections regarding exhaustion of domestic remedies in previous cases (see, in particular, *Tutar v. Turkey*, no. 11798/03, §§ 12-14, 10 October 2006). It finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned applications. In so far as the Government suggest that the applicant had failed to comply with the six months rule, the Court recalls that if an applicant submits her complaints to the Court while she is still in detention, the case cannot be dismissed as being out of time (see, in particular, *Ječius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX). In the instant case, the applicant was still in detention when she lodged her complaint before this Court. Consequently, the Court rejects the Government's objections under this head.

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

23. As to the complaint relating to the length of the applicant's detention in police custody, the Court reiterates that, according to the established case-law of the Convention organs, where there is no domestic remedy available, the six-month period runs from the date of the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, the period of six months runs from the end of the situation concerned (see, among other authorities, *Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004).

24. The Court notes that the applicant's detention in police custody ended when she was detained on remand on 1 October 1993, whereas this complaint was lodged with the Court on 12 November 2002, i.e. more than six months later. In these circumstances, the Court accepts the Government's objection that the applicant has failed to comply with the six-month rule. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Merits

25. 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 her continued detention on remand.

26. The applicant maintained her allegations.

27. 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).

28. 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).

29. In the instant case, the Court notes that there were two periods of pre-trial detention. The first period began on 17 September 1993 with the applicant's arrest and ended on 17 December 2003, the date of the judgment of the İstanbul Assize Court. From that point on, and until the Court of Cassation's decision of 1 April 2005, 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 1 April 2005 and ended on 21 December 2005 when the applicant was released pending trial. It has therefore lasted around eleven years in total (see, in particular, *Solmaz v. Turkey*, 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. It notes however, from the material in the case file, that the 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 evidence".

30. The Court takes note of the seriousness of the offence attributed to the applicant and the severity of the relevant punishment. However, it reiterates that the issue of whether a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI). In this connection, the Court further reiterates that the Convention case-law has developed four basic acceptable reasons for refusing bail: the risk that the accused will fail to appear for trial; the risk that the accused, if released, would take action to prejudice the administration of justice or commit further offences or cause public disorder (see, in particular, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 59, ECHR 2003-IX (extracts)). In the instant case, the Court notes the lack of such reasoning in the domestic court's decisions to prolong the applicant's remand in custody. There is also no evidence that the authorities took into account the time which had elapsed as a criterion in the applicant's favour.

31. 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 v. France*, judgment of 26 June 1991, Series A no. 207, § 43, *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, and *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, § 55).

32. The foregoing considerations are sufficient to enable the Court to conclude that the grounds given for the applicant's remand in detention were not "sufficient" and "relevant" to justify holding her in custody for almost eleven years.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. In her observations dated 19 January 2006 the applicant referred to the fact that she had been subjected to ill-treatment during her stay in police custody in breach of Article 3 of the Convention.

35. The Court notes that the applicant failed to elaborate her complaint under this head and to submit supporting documents. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 65,000 new Turkish liras (YTL) (approximately 40,236 euros (EUR)) in respect of pecuniary and YTL 40,000 (approximately EUR 24,760) for non-pecuniary damage. In respect of pecuniary damage, the applicant referred to the excessive length of the criminal proceedings and the time she had spent in detention pending trial, as a result of which she had not been able to work.

38. The Government contested the amounts.

39. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 9,000 for non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed, in total, YTL 45,500 (approximately EUR 28,165) for costs and expenses incurred both before the domestic proceedings and before the Court. This sum included the travelling expenses incurred by the applicant's family and legal representatives. In support of her claims, the applicant submitted a schedule of costs prepared by her representatives and the İstanbul Bar Association's recommended fees list for 2005. However, she did not submit any other relevant documents.

41. The Government contested the amount.

42. 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

43. 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 on remand 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 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 9,000 (nine 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 amount[s] 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President