



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

SECOND SECTION

CASE OF ÇARKÇI v. TURKEY

(Application no. 7940/05)

JUDGMENT

STRASBOURG

26 June 2007

FINAL

10/12/2007

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 Çarkçı 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 R. TÜRMEK,

Mr M. UGREKHIDZE,

Mr V. ZAGREBELSKY,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 5 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 7940/05) 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 Önder Çarkçı (“the applicant”), on 4 February 2005.

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

3. On 8 April 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 1973 and is currently detained on remand in Kandıra prison.

5. On 17 July 1996 the applicant was taken into custody on suspicion of having committed robbery.

6. On 25 July 1996 the Büyükçekmece Magistrates' Court ordered his detention on remand.

7. On 9 August 1996 the Bakırköy public prosecutor filed an indictment with the Bakırköy Assize Court, charging the applicant with robbery and homicide under Articles 448, 450, 497 of the Criminal Code and Article 13 § 1 of Law No. 6136.

8. On 21 February 1997 the public prosecutor at the Istanbul State Security Court filed another indictment, charging the applicant with attempting to undermine the constitutional order under Article 146 § 1 of the Criminal Code.

9. On 23 October 1997 the Istanbul State Security Court decided to join the two cases against the applicant.

10. On 27 January 2000 the public prosecutor at the Istanbul State Security Court submitted his opinion concerning the merits of the case, reiterating his view in the indictment that the applicant should be convicted under Article 146 § 1 of the Criminal Code.

11. On 14 March 2003 the Bakırköy Assize Court also decided to join the two cases.

12. The applicant requested to be released pending trial several times, both before the Bakırköy Assize Court and the Istanbul State Security Court. The courts dismissed his requests on each occasion, having regard to the state of the evidence, the nature of the offence and the possibility of his fleeing.

13. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. The case against the applicant was transferred to the Istanbul Assize Court.

14. According to the information in the Court's case file, the criminal proceedings are apparently still pending before the Istanbul Assize Court.

THE LAW

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

15. The applicant complained that his detention on remand exceeded the “reasonable time” requirement of Article 5 § 3 of the Convention, which reads, in so far as relevant, 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.”

16. The Government contested that argument.

A. Admissibility

17. 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

18. The Court observes that, in the instant case, the applicant's detention on remand began on 17 July 1996 and, according to the information in the case file, it is still pending. It has thus lasted approximately ten years and eleven months.

19. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present application (see, for example, *Dereci v. Turkey*, no. 77845/01, 24 May 2005, and *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant's detention on remand was excessive and contravened Article 5 § 3 of the Convention.

21. There has accordingly been a violation of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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.”

23. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account (see *Ciucci v. Italy*, no. 68345/01, § 33, 1 June 2006).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 26 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President