



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

SECOND SECTION

**CASE OF ZEREY AND OTHERS v. TURKEY**

*(Applications nos. 33412/02, 30229/02 and 30263/02)*

JUDGMENT

STRASBOURG

17 July 2007

**FINAL**

*17/10/2007*

*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 Zerey and Others v. Turkey,**

The European Court of Human Rights (Third 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,

Mrs D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

**PROCEDURE**

1. The case originated in three applications (nos. 33412/02, 30229/02 and 30263/02) 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 six Turkish nationals, Mr Ekrem Zerey, Mr Rıfat Demir, Mr Mehmet Garip Özer, Mr Ahmet Şahin, Mr Ahmet Durmaz and Mr Davut Şahin (“the applicants”), on 6 June 2002 and 29 July 2002.

2. The first applicant was represented by Mr M. Özbekli, a lawyer practising in Diyarbakır. The other applicants were represented by Mr M. Özbekli, Mr I. Sağlam and Mr M. H. Yılmaz, lawyers practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 21 March 2006 and 1 June 2006 the Court declared the applications partly inadmissible and decided to communicate the applicants’ complaints under Article 5 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASES**

4. The applicants were born in 1965, 1973, 1967, 1971, 1966 and 1970 respectively. The first applicant was in Mardin prison and the remaining

applicants were in Diyarbakir prison at the time of their applications to the Court.

5. The applicants were all arrested and taken into custody on suspicion of membership of Hezbollah. They were subsequently remanded in custody.

6. However, at the request of the Governor of the State of Emergency Region and the public prosecutor, pursuant to Article 3 (c) of Law-Decree no. 430, which allowed them to take further measures within the framework of the state of emergency, a single judge at the State Security Court authorised the applicants' return from prison to the Anti-terror branch of the relevant Security Directorate for further interrogation for a duration not exceeding ten days.

7. All the applicants save for the first applicant returned to prison before the ten day period was over. In respect of the first applicant, a single judge at the State Security Court extended, on 5 August 2002, his detention at the Security Directorate for another ten days. The applicant's lawyer objected. His objection was accepted by the State Security Court and the first applicant returned to prison.

8. The details are indicated in the table below:

| APPLICATION NO. | NAME OF THE APPLICANT | DATE OF REMAND IN CUSTODY | DATE OF TRANSFER TO THE SECURITY DIRECTORATE | DATE OF RETURN TO PRISON |
|-----------------|-----------------------|---------------------------|----------------------------------------------|--------------------------|
| 33412/01        | Ekrem Zerey           | 26/07/2002                | 26/07/2002                                   | 09/08/2002               |
| 30229/02        | Rıfat Demir           | 07/12/2001                | 08/12/2001                                   | 10/12/2001               |
| 30229/02        | Mehmet Garip Özer     | 07/12/2001                | 08/12/2001                                   | 10/12/2001               |
| 30229/02        | Ahmet Şahin           | 07/12/2001                | 08/12/2001                                   | 10/12/2001               |
| 30263/02        | Ahmet Durmaz          | 07/12/2001                | 08/12/2001                                   | 17/12/2001               |
| 30263/02        | Davut Şahin           | 07/12/2001                | 08/12/2001                                   | 17/12/2001               |

## II. RELEVANT DOMESTIC LAW AND PRACTICE

9. The relevant domestic law and practice in force at the material time can be found in *Karagöz v. Turkey* (no. 78027/01, §§ 42-47, ECHR 2005-... (extracts)).

## THE LAW

10. In view of the similarity of the three applications, the Court finds it appropriate to join them.

### I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

11. The applicants complained under Article 5 §§ 3, 4 and 5 of the Convention of the length and the unlawfulness of their detention at the Security Directorate on the basis of Article 3 (c) of Law-Decree no. 430. They further complained about the absence of an effective remedy whereby they could have challenged that detention and the lack of a right to compensation in that respect.

12. The Court considers that these complaints should be examined from the standpoint of 5 §§ 1 (c), 4 and 5, which reads:

“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;

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.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

#### A. Admissibility

13. The Government asked the Court to dismiss the applications as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. In this respect, the Government argued that the applicants, in accordance with the provisions of the Code on Criminal Procedure, could have challenged their detention which had been authorised pursuant to Article 3 (c) of Law-Decree no. 430.

14. The Court reiterates that it has already examined and rejected, in previous cases, similar objections of the Government as regards the alleged failure to exhaust domestic remedies (see, in particular, *Karagöz*, cited above, §§ 67-68, and *Balık v. Turkey*, no. 6663/02, §§ 24-25, 15 February 2007). No circumstances emerge in the instant cases, which would require it

to depart from its findings in the above-mentioned applications. It therefore rejects the Government's objection under this head.

15. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## **B. Merits**

16. The Government submitted that the applicants' detention was lawful and in conformity with Article 5 of the Convention. They further maintained that the applicants had effective remedies available to them under domestic law and the possibility to apply for compensation pursuant to Law no. 466.

17. The applicants maintained their allegations.

18. The Court has examined similar cases on previous occasions and has found violations of Article 5 §§ 1 (c), 4 and 5 in respect of detentions authorised on the basis of Law-Decree no. 430 (see, in particular, *Balık v. Turkey*, cited above, §§ 21, 24-26 and 28-29, *Karagöz*, cited above, §§ 56-60 and 67-68, and *Dağ and Yaşar v. Turkey*, no. 4080/02, §§ 67-68 and 75-76, 8 November 2005). The Court finds no reason to depart from these conclusions in the present cases.

19. Accordingly, it finds that there has been a violation of Article 5 §§ 1 (c), 4 and 5 of the Convention.

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

20. 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. Application no. 33412/02**

#### *1. Damage, costs and expenses*

21. The applicant, Mr Zerey claimed 10,000 euros (EUR) in respect of pecuniary damage. This sum included costs and expenses incurred both before the domestic courts and the Court. He further claimed EUR 30,000 in respect of non-pecuniary damage.

22. The Government contested the claims.

23. As regards the alleged pecuniary damage sustained by the applicant, the Court notes that some of his claims disclose no causal link between the violation found and the pecuniary damage requested. It further notes that in support of his remaining claims the applicant has failed to produce any receipt or other relevant documents. The Court accordingly dismisses them.

24. However, deciding on an equitable basis, it awards this applicant EUR 3,000 in respect of non-pecuniary damage.

## *2. Default interest*

25. 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.

## **B. Applications nos. 30229/02 and 30263/02**

26. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part.”

27. In the instant case, on 14 September 2006 the Court invited the applicants to submit their claims for just satisfaction by 26 October 2006. However, they did not submit any such claims within the specified time-limit.

28. In view of the above, the Court makes no award under Article 41 of the Convention.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 5 §§ 1 (c), 4 and 5 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the first applicant, Mr Zerey, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, this amount being converted into new Turkish liras at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

F. TULKENS  
President