



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

SECOND SECTION

CASE OF BAYAM v. TURKEY

(Application no. 26896/02)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

31/10/2007

This version was rectified on 28 January 2008 under Rule 81 of the Rules
of the Court.

In the case of Bayam 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,

Mr V. ZAGREBELSKY,

Mr D. POPOVIĆ, *judges*,

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

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 26896/02) 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, Mr Rifat Bayam¹ (“the applicant”), on 23 November 2000.

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

3. On 13 April 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**

3. The applicant was born in 1975 and was detained in the Batman E-Type Prison at the time of his application to the Court.

¹ Rectified on 28 January 2008. The applicant’s name read Rifat Bayam in the former version of the judgment.

4. On 14 December 1993 the applicant was taken into police custody on suspicion of membership of an illegal organisation, the PKK (the Kurdistan Workers' Party).

5. On 28 December 1993 the Batman Magistrates' Court ordered his detention on remand.

6. On 25 January 1994 the public prosecutor lodged a bill of indictment with the Diyarbakır State Security Court against the applicant and twelve other people, charging him with carrying out activities aimed at breaking up the unity of the State and removing part of the national territory from the State's control. He requested the court to sentence the applicant in accordance with Article 125 of the Criminal Code.

7. On 27 December 1996 the Diyarbakır State Security Court convicted the applicant under Article 168 § 2 of the Criminal Code of membership of the PKK and sentenced him to twelve years and six months' imprisonment.

8. On 10 November 1997 the Court of Cassation quashed the judgment of the first-instance court in respect of the applicant and a certain R.K., holding that the applicant should have been convicted of membership of the PKK and for throwing explosives, under Articles 168 § 2 and 264 of the Criminal Code. The case against the applicant and R.K. was referred to the Diyarbakır State Security Court.

9. On 3 November 1998 the first-instance court convicted the applicant under Articles 168 § 2 and 264 of the Criminal Code. It sentenced the applicant to twelve years and six months' imprisonment for membership of the PKK and to five years, six months and twenty days' imprisonment for having thrown explosives.

10. On 15 June 1999 the Court of Cassation once again quashed the judgment of the first-instance court.

11. On 26 September 2000 the Diyarbakır State Security Court convicted the applicant under Article 168 § 2 of the Criminal Code. However, it acquitted the applicant of the charge under Article 264 of the Criminal Code.

12. On 22 February 2001 the Court of Cassation dismissed the applicant's appeal, holding that it had not been submitted within the statutory time-limit.

THE LAW

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

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

14. The Government contested that argument.

A. Admissibility

15. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies, under Article 35 § 1 of the Convention. In this regard, they maintained that the applicant had failed to object to his continued remand in detention. They further maintained that the applicant could have sought compensation pursuant to Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained.

16. The Court recalls that it has already examined and rejected the Government's preliminary objections in similar cases (see *Koştı v. Turkey*, no. 4321/01, §§ 18-24, 3 May 2007 in respect of the first objection and *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 44 in respect of the second objection). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. As a result, it rejects the Government's preliminary objections.

17. The Court considers 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 Court notes that, when calculating the period to be taken into consideration, the multiple, consecutive detention periods of the applicant should be regarded as a whole. While assessing the reasonableness of the length of the applicant's pre-trial detention, it should make a global evaluation of the accumulated periods of detention under Article 5 § 3 of the Convention (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-... (extracts)). Consequently, after deducting the periods when the applicant

was detained after conviction under Article 5 § 1 (a) of the Convention – namely the periods between 27 December 1996 and 10 November 1997, 3 November 1998 and 15 June 1999 and 26 September 2000 and 22 February 2001 – from the total time that he was deprived of his liberty, the period to be taken into consideration in the instant case is nearly five years and three months.

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, *Atıcı v. Turkey*, no. 19735/02, 10 May 2007; *Solmaz*, cited above; *Dereci v. Turkey*, no. 77845/01, 24 May 2005; *Taciroğlu v. Turkey*, no. 25324/02, 2 February 2006).

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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 finds that in the instant case the length of the applicant's pre-trial detention was excessive and contravened Article 5 § 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

21. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings.

22. The Government contested that argument.

23. The Court reiterates that the reasonableness of the length of criminal proceedings is to be assessed in the light of the particular circumstances of the case, including its complexity, the applicant's conduct and the conduct of the competent authorities (see, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

24. In the instant case, it is observed that the period to be taken into consideration began on 14 December 1993, when the applicant was taken into police custody and ended on 22 February 2001 with the final decision of the Court of Cassation. It has thus lasted for approximately seven years and two months for two levels of jurisdiction, who each examined the case three times.

25. The Court notes that the case was complex. It involved several accused and the charges concerned membership of an illegal organisation. As regards the conduct of the authorities, the Court does not observe any period of inactivity that could be attributable to the domestic courts. Furthermore, following the appeal requests, the Court of Cassation decided on the case in less than one year.

26. In light of the foregoing, the Court concludes that, in the present case, the length of the criminal proceedings cannot be regarded as exceeding the reasonable time requirement of Article 6 § 1 of the Convention (see,

Özkan v. Turkey (dec.), no. 12822/02, 21 November 2006; *Bayram Yılmaz and Others* (dec.), no. 38370/02, 19 September 2006).

27. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. Invoking Article 3 of the Convention, the applicant alleged that during his trial he had to live with the fear of death penalty.

29. The Court notes, first, that the applicant faced charges under Article 125 of the Criminal Code, which carried the death penalty until 27 December 1996, the date on which the first-instance court rendered its first judgment and sentenced the applicant to twelve years and six months' imprisonment under Article 168 § 2 of the Criminal Code. During the subsequent proceedings the charges against the applicant were still brought under Article 168 § 2. The Court further observes that, as of October 1984, the Turkish National Assembly did not render any decision authorising the enforcement of a death penalty. It therefore concludes that, in the circumstances of the case, the enforcement of the death penalty against the applicant was illusory and that the applicant cannot be considered to have suffered ever-present and mounting anguish at the prospect of being executed, exposing him to treatment going beyond the threshold set by Article 3 of the Convention (see *Osman v. Turkey* (dec.), no. 4415/02, 6 October 2005; *Çınar v. Turkey*, no. 17864/91, Commission decision of 5 September 1994, Decisions and Reports 79-A/B, p.5; *Sertkaya v. Turkey* (dec.), no. 77113/01, 11 December 2003).

30. Therefore, the Court considers that this part of the complaint should be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. In his reply to the Government's observations, the applicant submitted further complaints. He alleged that he had to travel about 120 km. between Batman and Diyarbakır to attend the trials before the Diyarbakır State Security Court. He further complained about the length of his detention in police custody and stated that he had been deprived of his right to legal assistance while there. Finally, he maintained that the Diyarbakır State Security Court could not be considered an independent and impartial tribunal due to the presence of a military judge on the bench. In respect of these complaints, the applicant invoked Articles 3, 5 and 6 of the Convention.

32. The Court recalls that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter “within a period of six months from the date on which the final decision was taken”. The running of the six months time-limit is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. As regards complaints not included in the initial application, the running of the six months time-limit is not interrupted until the date when the complaint is first submitted to a Convention organ (see, *Allan v. the UK* (dec.), no. 48539/99, 28 August 2001).

33. In the present case, the six months period in respect of the applicant's Article 5 complaint started to run on 28 December 1993 and in respect of his complaints under Articles 3 and 6 on 22 February 2001. The Court notes that these complaints were not mentioned in any communication prior to 25 May 2006.

34. Consequently, the Court concludes that this part of the application should be rejected for being introduced out of time pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 1,500 euros (EUR) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage on account of the undue length of his pre-trial detention, which cannot be sufficiently compensated by the finding of a violation alone. Ruling on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 2,537 for the costs and expenses incurred before the domestic courts and the Court.

40. The Government contested the applicant's claim as being unsubstantiated by any documentation.

41. Making its own estimate based on the information available, the Court considers it equitable to award the applicant EUR 1,000 for the costs and expenses incurred before the Court.

C. Default interest

42. 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 amounts to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable:
 - (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses.
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President