



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

THIRD SECTION

CASE OF TANDOĞAN v. TURKEY

(Application no. 9244/02)

JUDGMENT

STRASBOURG

20 September 2007

FINAL

20/12/2007

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 Tandoğan v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŖ,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 30 August 2007,

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

PROCEDURE

1. The case originated in an application (no. 9244/02) 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 Kenan Tandoğan (“the applicant”), on 31 July 2001.

2. The applicant was represented by Mr and Mrs Kırdök, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 17 November 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1973 and lives in Istanbul.

5. On 31 March 1994 the applicant was taken into custody by police officers from the anti-terror branch of the Istanbul Security Directorate on suspicion of membership of an illegal organisation, the Dev-Sol (Revolutionary Left).

6. On 9 April 1994 the applicant was brought before the Istanbul State Security Court and remanded in custody. He was placed in Ümraniye Prison.

7. On 2 May 1994 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and nine other persons. The public prosecutor charged the applicant with attempting to undermine the constitutional order, an offence defined under Article 146 of the Criminal Code.

8. Subsequently, the case brought against the applicant was joined with another case pending before the Istanbul State Security Court.

9. Following the riots in the Ümraniye Prison to protest against F-Type prisons, in December 2000 the applicant was sent to Kandıra F-type Prison.

10. On 25 December 2000 in connection with the incidents that took place in the Ümraniye Prison, the judge at the Üsküdar Magistrate's Court ordered the applicant's detention on remand *in absentia*. In the detention order, it was stated that the applicant was accused of homicide, armed riot against prison administration and damaging prison property.

11. On 12 January 2001 the applicant was brought before the Kandıra Magistrate's Court and the detention order dated 25 December 2000 was read out to him. He was also reminded that he could appeal against this decision before the Üsküdar Assize Court.

12. On 23 March 2001 the Üsküdar public prosecutor filed a bill of indictment with the Üsküdar Assize Court against the applicant and 398 other persons on account of the incidents in Ümraniye Prison. The prosecutor requested the court to convict the accused persons under Articles 264, 304, 450, 456 and 457 of the Criminal Code of homicide, of having started a riot in the prison and of damage to public property.

13. In the meantime, on 9 February 2001, the Istanbul State Security Court ordered the applicant's release pending trial within the context of the proceedings brought against him with the charge under Article 146 of the Criminal Code. However, he was not released as his detention on remand had been ordered on 25 December 2000 in connection with the incidents in the Ümraniye Prison.

14. On 14 February 2001 the applicant filed a petition with the Üsküdar Magistrates' Court. In his petition, he maintained that, although his release had been ordered by the state security court, he was not released and that he assumed that the reason for his continued detention was the Üsküdar Magistrate's Court's detention order. The applicant contended that he was not aware of the reasons for this order and requested to be brought before a court and to be released.

15. On 6 July 2001 the Üsküdar Assize Court held its first hearing and ordered the release of the applicant –together with twelve other accused–pending trial.

16. On 7 July 2001 at around 8.30 p.m. the applicant was released from prison.

17. In 2004 the State Security Courts were abolished following a constitutional amendment and the applicant's case before the Istanbul State Security Court was transferred to the Istanbul Assize Court.

18. On 27 October 2004 the Istanbul Assize Court held that, since the applicant was a minor when the crimes in question had been committed, the case should be examined by the Istanbul Juvenile Court. It accordingly declared non-jurisdiction.

19. On 14 November 2006 the Istanbul Juvenile Court held its first hearing and decided that it lacked jurisdiction to examine the case. The case was accordingly remitted before the Court of Cassation to determine which court had jurisdiction to examine the case.

20. According to the information in the case file based on the latest submissions by the parties, the case is apparently still pending before the Court of Cassation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

In respect of the applicant's first detention on remand

21. 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.”

22. The Government contested that argument.

A. Admissibility

23. The Government argued that the applicant has not exhausted the domestic remedies as he had not awaited the outcome of the proceedings before the domestic courts before lodging his application with the Court. In their view, if the applicant were to be acquitted at the end of the proceedings, he could request compensation pursuant to Law No. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained.

24. In the instant case, the applicant complained under Article 5 § 3 of the Convention that the length of his detention on remand had been excessive.

25. The Court has already held that Law No. 466, which provides for an action for damages taken against the State in respect of the detention of a person who is subsequently acquitted, concerns Article 5 § 5 only (see, among many others, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 44). Therefore, the compensation which could be awarded to the applicant, if he were to be acquitted at the end of the proceedings, cannot be considered to constitute recognition of or a redress for the specific violation alleged by the applicant, namely the excessive length of his detention on remand (see *Duyum v. Turkey*, no. 57963/00, § 58, 27 March 2007).

26. The Court accordingly dismisses the Government's objection.

27. The Court notes 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

28. The Court notes that, in the instant case, the period to be taken into consideration began on 31 March 1994 with the applicant's arrest and ended on 9 February 2001, when the Istanbul State Security Court ordered his release. It thus lasted approximately 6 years and 10 months. During this period, the domestic courts prolonged the applicant's detention on remand using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of evidence and the duration of detention".

29. 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; *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006).

30. 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, it considers that in the instant case the length of the applicant's pre-trial detention was excessive and contravened Article 5 § 3 of the Convention.

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

In respect of the applicant's second detention on remand

A. As regards the applicant's complaint raised under Article 5 § 2

32. The applicant complained that he was not informed of the reasons of his second detention on remand and of the charges against him.

33. The Government maintained that the applicant's allegation that he had not been informed of the reasons of his detention on remand and of the charges against him was unsubstantiated. They stated that the applicant was informed of the reasons of his detention on remand and the charges against him on 12 January 2001 when the Kandıra Magistrate's Court judge read out to him the content of the detention order dated 25 December 2000.

34. The Court recalls that, by virtue of Article 5 § 2, any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see, for instance, *H.B. v. Switzerland*, no. 26899/95, § 44, 5 April 2001).

35. In the present case, following the incidents that took place in the Ümraniye Prison in December 2000, the applicant was accused of homicide, of participating in a riot and of damaging prison property. On 25 December 2000 the Üsküdar Magistrate's Court ordered his detention on remand *in absentia*. In the meantime, the applicant was transferred from Ümraniye Prison to Kandıra Prison. On 12 January 2001 when the applicant was brought before the Kandıra Magistrate's Court, the detention order dated 25 December 2000 was read out to him. This detention order indicated that he was accused of homicide, armed riot against prison administration and damaging prison property.

36. The Court notes that when the Üsküdar Magistrate's Court delivered the detention order on 25 December 2000, the applicant was already detained on remand in the Ümraniye Prison. In the Court's view, the authorities therefore had the possibility of providing his presence before the domestic court when delivering the detention order. However, in the context of this case, the Court finds that the detention order was read out to the applicant on 12 January 2001 and it indicated the essential ground for his detention. As a result, the information furnished to the applicant by the Kandıra Magistrate's Court satisfied the requirements of Article 5 § 2.

37. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. As regards the applicant's release following the release order dated 6 July 2001

38. The applicant complained under Article 5 § 1 that he had been unlawfully and arbitrarily kept in detention for twenty eight hours between the end of the trial on 6 July 2001 at about 4 p.m. and his release on 7 July 2001 at about 8.30 p.m. Article 5 § 1, in so far as relevant, reads as follows:

“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:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

...”

39. The Government argued that the period of time in question had been normal, in view of the fact that there were several administrative formalities that had to be carried out before the applicant's release. Before releasing the applicant, the authorities had to verify whether he was wanted for another crime or whether there was another detention order against him. They further maintained that the authorities had not acted arbitrarily or deliberately delayed the applicant's release.

40. The Court reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see, among other authorities, the *Giulia Manzoni v. Italy* judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25).

41. While it is true that for the purposes of Article 5 § 1 (c) detention ceases to be justified “on the day on which the charge is determined” and that, consequently, detention after acquittal is no longer covered by that provision, “some delay in carrying out a decision to release a detainee is often inevitable, although it must be kept to a minimum” (see the *Giulia Manzoni*, cited above, § 25 *in fine*). However, the Court must, scrutinise

complaints of delays in release of detainees with particular vigilance. It is incumbent on the respondent Government to provide a detailed account of the relevant facts (see, *Labita v. Italy* ([GC], no. 26772/95, ECHR 2000-IV, § 170 and *Bojinov v. Bulgaria*, no. 47799/99, § 36, 28 October 2004).

42. The Government stated that the delay in the applicant's release had been caused due to administrative formalities. The Court reiterates that administrative formalities connected with release cannot justify a delay of more than several hours (see, *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003). In the present case, the applicant was released nearly twenty eight hours after the Üsküdar Assize Court's release order. In the absence of a strict account of the relevant events, hour by hour, the Government's contention that the delay in the applicant's release had been justified cannot be upheld (*Bojinov*, cited above, § 39).

43. In these circumstances, the applicant's continued detention following the release order did not amount to a first step in the execution of the order for his release and therefore did not come within sub-paragraph 1 (c), or any other sub-paragraph, of Article 5.

44. Accordingly, there has been a violation of Article 5 § 1 on that account.

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

45. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings brought against him. Article 6 § 1 provides as relevant:

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

46. The Government contested that allegation.

47. The Court notes that the period to be taken into consideration began on 31 March 1994 when the applicant was taken into police custody and, according to the information in the case file, the proceedings are still pending before the Court of Cassation on the date of adoption of the present judgment. They have thus lasted over thirteen years.

A. Admissibility

48. 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

49. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

50. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

51. 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 considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government contested this claim.

55. Ruling on an equitable basis, the Court awards the applicant EUR 13,500 in respect of non-pecuniary compensation.

B. Costs and expenses

56. The applicant also claimed 250 New Turkish liras (YTL) - approximately EUR 140 - in respect of costs and expenses, and YTL 10,200 - approximately EUR 5,700 - in respect of lawyers' fees.

57. The Government contested these claims.

58. 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

59. 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 complaints raised under Article 5 §§ 3 and 1, and Article 6 § 1 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 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *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 13,500 (thirteen thousand five hundred 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President