



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

SECOND SECTION

CASE OF MUHAMET AKYOL v. TURKEY

(Application no. 23438/02)

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 Akyol v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMESEN,

Mr M. UGREKHIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *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. 23438/02) 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 Muhamet Akyol (“the applicant”), on 7 July 2000. In his original application form, the applicant complained, under Article 6 § 1 of the Convention, about the length of the criminal proceedings against him.

2. On 21 January 2002 the applicant lodged a new complaint with the Court and alleged that the length of his detention on remand was in breach of Article 5 § 3 of the Convention.

3. The applicant was represented by Ms Fatmagül Yolcu, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

4. On 14 September 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and is currently detained in the Tekirdağ F-Type Prison.

6. On 6 February 1993 the applicant was taken into custody within the context of a police operation carried out against an illegal organisation, namely the TKP/ML – TIKKO (the Turkish Communist Party-Marxist Leninist - Turkish Workers and Peasants' Liberation Army).

7. On 15 February 1993 the applicant was brought before a single judge at the Istanbul State Security Court who ordered his detention on remand.

8. On 8 April 1993 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against nine persons, including the applicant who was charged with membership of an illegal organisation under Article 168 § 2 of the Criminal Code.

9. On 19 April 1994 the case brought against the applicant and his co-accused before the 2nd Chamber of the Istanbul State Security Court was joined with another case which had been pending before the 3rd Chamber of the Istanbul State Security Court.

10. During the subsequent forty-eight hearings between 17 May 1993 and 12 June 2000, the Istanbul Security Court, relying on the state of the evidence, the nature of the offence, and the duration of his detention, refused to release the applicant.

11. In the meantime, on 8 July 1997 the applicant escaped from prison. On 17 September 1997 he was arrested and sent back to prison.

12. On 12 June 2000 the Istanbul State Security Court convicted the applicant as charged and sentenced him to twenty years' imprisonment.

13. On 15 May 2001 the Court of Cassation quashed the judgment of 12 June 2000 and remitted the case file to the first-instance court.

14. On 28 December 2001 the Istanbul State Security Court ordered the applicant's release pending trial.

15. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. Subsequently, the 11th Chamber of the Istanbul Assize Court acquired jurisdiction over the case.

16. While these proceedings were pending under file no. 2001/225, on 2 July 2004 the applicant was taken into police custody in connection with a new crime. On 6 July 2004 he was detained on remand.

17. On 9 July 2004 the Istanbul public prosecutor filed a new bill of indictment with the 11th Chamber of the Istanbul Assize Court, charging the applicant under Article 146 of the Criminal Code with attempting to undermine the constitutional order. The proceedings commenced before the 11th chamber of the Istanbul Assize Court under file no. 2004/225.

18. On 31 January 2005 the 11th Chamber of the Istanbul Assize Court rendered its judgment in case no. 2001/225 in respect of some of the accused. It disjoined the case against the applicant and decided to join it to the new proceedings brought against the applicant pending before the same court under file no. 2004/225.

19. On 2 February 2005 the 11th Chamber of the Istanbul Assize Court decided to join the case (file no. 2004/225) to another pending before it (file no. 2004/191).

20. During the subsequent hearings, the Istanbul Assize Court rejected the applicant's release requests having regard to the state of the evidence, the nature of the offence and the risk of the applicant absconding.

21. According to the information in the case file, the criminal proceedings against the applicant are still pending before the 11th Chamber of the Istanbul Assize Court under file no. 2004/191. The applicant is currently in detention on remand.

THE LAW

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

22. 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.”

23. The Government contested that argument.

A. As regards the applicant's detention on remand between 6 February 1993 and 28 December 2001

1. Admissibility

24. The Government argued that, as the applicant had lodged his complaint under Article 5 § 3 of the Convention on 21 January 2002, the time he had spent in detention between 6 February 1993 and 12 June 2000 should be rejected for having been introduced outside the six-month time-limit.

25. The Court refers to the principles adopted in the *Solmaz v. Turkey* judgment (no. 27561/02, §36, ECHR 2007-... (extracts)), where it was held that, if the applicant is in effect imprisoned throughout, the multiple, consecutive detention periods should be regarded as a whole and the six-month period should only start running from the end of the last period. In the instant case, the applicant's detention on remand began when he was arrested on 6 February 1993. He was detained within the meaning of Article

5 § 3 of the Convention until his conviction by the Istanbul State Security Court on 12 June 2000. As from that date, until 15 May 2001, when the Court of Cassation quashed the decision of the first-instance court, he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1(a) and, therefore, this part of his detention falls outside the scope of Article 5 § 3. From 15 May 2001 until his release pending trial on 28 December 2001, the applicant was again in pre-trial detention falling under Article 5 § 3 of the Convention. As a result, the six-month period should only start running from the end of the last period of pre-trial custody, i.e. 28 December 2001.

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

27. The Court further notes this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

28. The Government submitted that the Istanbul State Security Court had not unduly prolonged the applicant's detention on remand. The offence with which the applicant was charged was of a serious nature. They also maintained that the applicant had escaped from prison between 8 July and 17 September 1997.

29. The Court notes that, as explained above, the period in question began on 6 February 1993 with the applicant's arrest and ended on 28 December 2001, when the applicant was released pending trial. In line with its case-law, after deducting the period when the applicant was detained after conviction under Article 5 § 1 (a) of the Convention – namely the period between 12 June 2000 and 15 May 2001 – from the total time that he was deprived of his liberty, the period to be taken into consideration in the instant case is over seven years and eleven months. The Court further considers that the applicant cannot rely on the period during which he was a fugitive, as a result the period between 8 July and 17 September 1997 should also be deducted. In sum, the period in question lasted some seven years and nine months.

30. 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”. The Court takes note of the seriousness of the offence attributed to the applicant and the severity of the possible 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 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 and stresses that, even after the applicant's escape and re-incarceration in 1997, no mention was made of the risk of him absconding again. In the Court's view, 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; *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, § 55).

31. 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).

32. 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 this first period of the applicant's pre-trial detention was excessive and contravened Article 5 § 3 of the Convention.

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

B. As regards the applicant's detention on remand from 2 July 2004 to date

34. The Government submitted that the Istanbul Assize Court had not unduly prolonged the applicant's detention on remand. They maintained that the aim was to avoid the risk that the applicant would flee or commit another similar crime. The fact that the applicant had fled from prison in 1997 and that he had resumed his activities in the illegal organisation, the TKP/ML – TIKKO, following his release in December 2001, proved that there had been a good reason to prolong his detention pending trial.

35. The Court reiterates that the reasonableness of an accused person's continued detention must be assessed in each case according to its special features (*Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 20, § 10).

36. In the present case, the applicant was arrested on 2 July 2004 on suspicion of being involved in the activities of an illegal organisation and new charges were brought against him under Article 146 of the Criminal Code for attempting to undermine the constitutional order. The Court acknowledges, in the first place, the seriousness of the offence with which

the applicant was charged and the severity of the sanction which he faced if found guilty. Secondly, it notes that the Istanbul Assize Court considered the applicant's continued detention at the end of each hearing, either of its own motion or at the applicant's request. From the material in the case file it is clear that the Istanbul Assize Court ordered the applicant's continued detention pending trial based on the seriousness of the crime and the risk of his absconding. Having regard to the fact that the applicant had indeed escaped from prison in 1997 and was suspected of continuing his activities in an illegal organisation after his release, the Court considers that the reasons given by the domestic court when prolonging the applicant's detention on remand were relevant, and therefore justified the length of his detention.

37. In the light of the above considerations, the Court finds that, in the present case, the length of this second period of the applicant's detention on remand cannot be regarded as constituting a breach of Article 5 § 3 of the Convention.

38. 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.

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

39. The applicant complained of a breach of the reasonable time requirement of Article 6 § 1 of the Convention, which 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...”

40. The Government contested that allegation.

41. The Court notes that the period to be taken into consideration began on 6 February 1993 when the applicant was taken into police custody. According to the information in the case file, it had not yet ended by the time of the adoption of the present judgment. To date the proceedings have thus apparently lasted more than fourteen years and six months for three levels of jurisdiction.

A. Admissibility

42. 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

43. 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)

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

45. 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 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

46. Article 41 of the Convention provides as follows:

“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

47. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

48. The Government contested the claim.

49. 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 part of his detention on remand and of the criminal proceedings, which cannot be sufficiently compensated by the finding of violations alone. Ruling on an equitable basis, the Court awards the applicant EUR 12,500 under this head.

B. Costs and expenses

50. The applicant claimed 6,000 New Turkish liras (YTL) – approximately EUR 3,300 – for legal fees and YTL 400 – approximately EUR 220 – for costs and expenses.

51. The Government contested these claims.

52. According to the Court's case-law, an applicant is entitled to reimbursement of 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, the applicant has not substantiated that he has actually incurred the costs so claimed. Accordingly, it makes no award under this head.

C. Default interest

53. 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 second detention on remand inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the applicant's detention on remand between 6 February 1993 and 28 December 2001;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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, EUR 12,500 (twelve thousand five hundred euros) in respect of non-pecuniary damage, 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;
 - (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;

5. *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.

S. DOLLÉ
Registrar

F. TULKENS
President