



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

SECOND SECTION

CASE OF ETE v. TURKEY

(Application no. 29315/02)

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 Ete 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,
Mrs A. MULARONI,
Mr V. ZAGREBELSKY, *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. 29315/02) 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 two Turkish nationals, Mrs Fehime Ete and Ms Şadiye Ete, on 21 May 2002.

2. The applicants were represented by Mrs R. Yalçındağ, Mr O. Baydemir, Mr C. Aydın and Mr B. Kaya, 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 13 June 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints bought by Fehime Ete concerning the lawfulness and length of her detention in police custody on the basis of Law-Decree no. 430 and her right to an effective remedy whereby she could have challenged the lawfulness of this detention. 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 first applicant, Fehime Ete (hereafter referred to simply as “the applicant”), was born in 1960 and lives in Siirt.

5. On 21 October 2001 the applicant was arrested and taken into police custody on suspicion of aiding members of an illegal armed organisation. She was remanded in custody on 24 October 2001.

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 430, which allowed them to take further measures within the framework of the state of emergency, a single judge at the Van State Security Court authorised, on 25 November 2001, the applicant's transfer from prison to the Diyarbakır gendarmerie command for further interrogation for a duration not exceeding ten days. This period was extended by the same court for another ten days on 5 December 2001. The objection lodged by the applicant's lawyer against this decision was dismissed on 7 December 2001.

7. Between 25 November and 12 December 2001, the applicant was held in the Diyarbakır and Siirt gendarmerie command. On 12 December 2001 the applicant was returned to prison.

8. The subsequent criminal proceedings brought against the applicant ended with her acquittal.

II. THE RELEVANT DOMESTIC LAW

9. The relevant domestic law and practice in force at the material time can be found in the case of *Karagöz v. Turkey* (no. 78027/01, §§ 42-47, 8 November 2005).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

10. The applicant complained under Article 5 of the Convention of the length and unlawfulness of her detention at the gendarmerie command from 25 November to 12 December 2001. She further complained under the same provision about the absence of an effective remedy whereby she could have challenged this detention.

11. The Court considers that these complaints should be examined from the standpoint of Article 5 §§ 1 (c) and 4, which provide as relevant:

“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.”

A. Admissibility

12. The Government asked the Court to dismiss the application for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. In this respect, they argued that the applicant could have challenged her detention, which had been authorised pursuant to Article 3(c) of Law-Decree no. 430, and she could also have sought compensation pursuant to Law no. 466 pertaining to the payment of compensation to persons unlawfully arrested or detained.

13. The applicant maintained her allegations.

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, §§ 24-24 and 28-29, 15 February 2007). It finds no particular circumstances in the instant case which would require it to depart from its findings in the abovementioned applications. It therefore rejects the Government's objection under this head.

15. 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

16. The Government submitted that the transfer of the applicant to the gendarmerie command on the basis of Law-Decree no. 430 could not be construed as detention in police custody and that the applicant's complaints under this head were manifestly ill-founded.

17. The applicant maintained her allegations.

18. The Court has examined similar cases on previous occasions and has found violations of Article 5 §§ 1 (c) and 4 in respect of detentions authorised on the basis of Law-Decree no. 430 (see, in particular, *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). It finds no reason to depart from these conclusions in the present case.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. In her observations dated 29 January 2007, the applicant and her daughter, Şadiye Ete, complained under Articles 3, 5, 6, 13, 14 and 18 of the Convention about the length and lawfulness of their detention and repeated their allegations of ill-treatment in police custody.

21. Even assuming that some of the complaints raised under this head have not already been declared inadmissible at an earlier stage (see paragraph 3 above), the Court finds that none of them disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols in the light of all the material in its possession, and in so far as the matters complained of are within its competence. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

III. 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.”

A. Damage

23. The applicant claimed 25,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. This sum included future medical expenses of the applicant and her daughter, as well as expenses incurred by the applicant's family while visiting her in prison.

24. The Government contested the amount.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, it awards the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed EUR 6,214 for the costs and expenses incurred before the Court. She relied on the Diyarbakır Bar Association's recommended minimum fees list for 2007.

27. The Government contested the claims.

28. Since the applicant submitted no justification as regards costs and expenses, as required by Rule 60 of the Rules of Court, the Court makes no award under this head.

C. Default interest

29. 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* admissible the complaints concerning the lawfulness and length of Fehime Ete's detention in police custody on the basis of Law-Decree no. 430 and her right to an effective remedy whereby she could have challenged the lawfulness of this detention, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 §§ 1 (c) and 4 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay Fehime Ete, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damages, to be converted into new Turkish liras at the rate applicable at the date of the settlement and free of any taxes or charges that may be payable;
 - (b) that from the expiry of the abovementioned 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;
4. *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