



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

THIRD SECTION

CASE OF SARAÇOĞLU AND OTHERS v. TURKEY

(Application no. 4489/02)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

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 Saraçoğlu and Others 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. TÜRMEK,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 4489/02) 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 Ertuğrul Saraçoğlu, Mr Göksel Avcı, Mr Ali Kemal Mart, Ms Oya Aslan, Mr Ulaş Aday and Mr Şerif Güneş ("the applicants"), on 27 September 2001.

2. The applicants were represented by Mr F. Korkmaz and Mr N. Eren, 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 12 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1978, 1977, 1979, 1983, 1980 and 1978 respectively and live in Antalya.

5. On 27 April 2001 the applicants were taken into custody by police officers from the Anti-Terrorism Branch of the Diyarbakır Security Directorate. According to the arrest and search protocols, the applicants

were arrested in the course of a police operation carried out against an illegal organisation, namely the DHKP-C (the Revolutionary People's Liberation Party-Front) as they were considered to be involved in the activities of this organisation at the university.

6. On 29 April 2001 the deputy director of the Anti-Terrorism Branch of the Diyarbakır Security Directorate requested the public prosecutor at the Diyarbakır State Security Court to extend the applicants' custody period for two days. The public prosecutor at the Diyarbakır State Security Court granted the requested extension.

7. On 1 May 2001 the Diyarbakır Security Directorate requested the Diyarbakır State Security Court to extend the custody period for a further six days. The single judge of the State Security Court duly extended the custody period for six days starting from 1 May 2001.

8. On 3 May 2001 the applicants made statements before the police.

9. On 4 May 2001 the applicants were brought before a doctor, who noted that there were no signs of ill-treatment on their bodies.

10. On the same day, the applicants made statements before the public prosecutor at the Diyarbakır State Security Court and subsequently, a single judge of the state security court, who ordered that Ertuğrul Saraçoğlu, Göksel Avcı, and Ali Kemal Mart be detained on remand and the other applicants be released. Before the judge, one of the applicants, Göksel Avcı alleged that he had been subjected to ill-treatment while in custody.

11. On 8 May 2001 the applicants' representative filed an objection with the court requesting that Ertuğrul Saraçoğlu, Göksel Avcı and Ali Kemal Mart be released. In his petition, the representative maintained, *inter alia*, that the applicants had been subjected to different types of ill-treatment while in custody. He alleged that the applicants had been beaten, deprived of food and water, that their testicles had been squeezed and electric shocks had been administered.

12. On 11 May 2001 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment charging the applicants with membership of the DHKP-C under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713.

13. On 4 July 2001 the Diyarbakır State Security Court ordered the applicants' release pending trial, holding that the relevant evidence had been collected and that the applicants were students and had to take their exams at the university.

14. The applicants maintained before the trial court that they had signed their statements under duress while in police custody. Göksel Avcı reiterated his allegation of ill-treatment.

15. On 24 January 2002 the Diyarbakır State Security Court acquitted the applicants of the charges against them.

16. On 21 March 2002 the judgment of the first-instance court became final as neither the public prosecutor nor the applicants filed an appeal against it.

17. On 24 April 2002 three of the applicants, namely Ali Kemal Mart, Göksel Avcı and Ertuğrul Saraçoğlu, together with another person M.D., who had also been in police custody with the applicants between 27 April and 4 May 2001, initiated proceedings before the Diyarbakır Assize Court and requested compensation for the time they had spent in police custody. On 10 December 2003 the court awarded 500,000,000 Turkish liras (TRL) – approximately 300 euros- each to Ali Kemal Mart, Göksel Avcı, Ertuğrul Saraçoğlu and TRL 250,000,000 to M.D. in respect of non-pecuniary compensation.

II. RELEVANT DOMESTIC LAW

18. The fourth paragraph of Article 128 of the Code of Criminal Procedure (as amended by Law no. 3842/9 of 18 November 1992) provides that any person who has been arrested and/or in respect of whom a prosecutor has made an order for his or her continued detention may challenge that measure before the appropriate district judge and, if successful, be released.

19. Section 1 of Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained provides:

“Compensation shall be paid by the State in respect of all damage sustained by persons:

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time allowed by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time allowed for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being arrested or detained in accordance with the law, are not subsequently committed for trial ..., or are acquitted or discharged after standing trial; or

(7) who have been sentenced to a term of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

20. The applicants complained under Articles 3 and 13 of the Convention that they were subjected to ill-treatment while in police custody and that the authorities failed to conduct an investigation into their allegations of ill-treatment.

21. As regards the applicants' Article 3 complaints, the Court recalls that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

22. In the instant case, the applicants complained that they had been subjected to ill-treatment during their police custody. Nonetheless, several elements cast doubt on the veracity of the applicants' claims. The Court observes that the doctor, who examined the applicants on the last day of their police custody, reported that there were no signs of ill-treatment on their bodies. It further notes that Oya Aslan, Ulaş Aday and Şerif Güney were released from police custody on 4 May 2001 and the remaining three applicants were released pending trial on 4 July 2001. Thus the applicants could have obtained medical reports in support of their allegations after their release. They failed to do so. Furthermore, they have not adduced any material which could add probative weight to their allegations. There is therefore nothing in the case-file to show that the applicants had been ill-treated as alleged during their police custody.

23. In view of the above, the Court concludes that the applicants have not substantiated their claims and this part of the application should therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

24. As regards the applicants' complaint under Article 13 of the Convention, the Court reiterates that this provision cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be. The grievance must be an arguable one in terms of the Convention (see, in particular, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). In view of its conclusions above (paragraphs 22 and 23), the Court considers that the applicants have no arguable claim of a violation of their

rights under Article 3, which would have required a remedy within the meaning of Article 13 (see *Künkül v. Turkey* (dec.), no. 57177/00, 30 November 2006). Consequently, this part of the application should also be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

25. The applicants complained under Article 5 § 1 (c) of the Convention that they had been detained unlawfully since there existed no “reasonable suspicion” justifying their arrest.

26. The Court recalls that the “reasonableness” of the suspicion on which an arrest must be based, forms an essential part of the safeguard against arbitrary arrest and detention laid down in Article 5 § 1 (c) of the Convention. This requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

27. It further observes that the reasonable suspicion, as provided in this provision, does not mean that the suspect's guilt must be established and proved at the time of the arrest. The object of questioning during detention under sub-paragraph (c) of Article 5 § 1 is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge which comes at the next stage of the process of criminal investigation (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, p. 29, § 53; *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55).

28. The Court notes in this context that the applicants were arrested in the course of an investigation into an illegal organisation. In these circumstances, the suspicion against them may be considered to have reached the level required by Article 5 § 1 (c) as the purpose of the deprivation of liberty was to confirm or dispel the suspicion about the involvement of the applicants in this illegal organisation. Accordingly, the facts disclose no appearance of a violation of Article 5 § 1 (c) of the Convention (see *Selçuk v. Turkey*, no. 21768/02, § 24, 10 January 2006).

29. 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 5 § 2 OF THE CONVENTION

30. The applicants alleged under Article 5 § 2 of the Convention that they were not informed of the reasons for their arrest.

31. The Court observes that the search and arrest report, which was signed by the applicants, clearly indicated that the applicants had been taken into custody in the course of a police operation carried out against the DHKP-C, as they were considered to be involved in the activities of this illegal organisation at the university.

32. Having regard to the above, the Court concludes that the applicants must be deemed to have been aware of the reasons of their arrest.

33. It follows that this part of the application should be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

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

34. The applicants complained that the length of their police custody was excessive. Article 5 § 3 of the Convention reads:

“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.”

35. The Government argued that the length of the applicants' detention in custody was in conformity with the legislation in force at the time.

A. Admissibility

36. The Court finds 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

37. The Court notes that the applicants' police custody lasted eight days. It reiterates that, in the case of *Brogan and Others v. the United Kingdom* (cited above, § 62), it held that detention in police custody which had lasted four days and six hours without judicial control fell outside the strict time constraints of Article 5 § 3 of the Convention, even though its purpose was to protect the community as a whole against terrorism.

38. Even supposing that the activities of which the applicants stood accused implicated them in serious offences, the Court cannot accept that it

was necessary to detain them for eight days without being brought before a judge or other officer authorised by law to exercise judicial power.

39. There has, accordingly, been a violation of Article 5 § 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

40. The applicants alleged that there were no remedies in domestic law to challenge the lawfulness of their detention in police custody. They invoked Article 5 § 4 of the Convention, which reads:

“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

41. The Government submitted that this complaint should be rejected for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. They argued in the first place that the applicants could have, pursuant to Article 128 of the Code of Criminal Procedure, challenged the length of their detention in police custody. Secondly, they maintained that the applicants had not invoked Article 5 of the Convention at any stage before the domestic authorities.

42. The Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see *Öcalan v. Turkey* [GC], no. 46221/99, §§ 66-71, ECHR 2005-...; *Özçelik v. Turkey*, no. 56497/00, § 22-24, 20 February 2007). It perceives no particular circumstances in the instant case which would require it to depart from its previous findings.

43. Consequently, the Court rejects the Government's preliminary objections.

44. The Court finds 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

45. The Government contended that Article 128 of the Code of Criminal Procedure, which was in force at the material time, provided an effective remedy to challenge the lawfulness of detention in police custody.

46. The Court reiterates that in several cases raising similar questions to those in the present case, it rejected the Government's aforementioned

submission and found a violation of Article 5 § 4 of the Convention (see, among others, *Öcalan*, cited above, § 76 and, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII, § 54; *Özçelik*, cited above, § 34). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the aforementioned cases.

47. In conclusion, the Court holds that there has been a violation of Article 5 § 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

48. The applicants complained under Article 5 § 5 of the Convention that they did not have any remedy whereby to seek compensation for the time they spent in police custody.

49. The Government submitted that, following their acquittal, three of the applicants, namely Mr Ali Kemal Mart, Mr Göksel Avcı and Mr Ertuğrul Saraçoğlu, together with another person named M.D., who had also been in police custody between 27 April and 4 May 2001, had initiated proceedings before the Diyarbakır Assize Court and requested compensation pursuant to Law no. 466. On 10 December 2003 they were awarded non-pecuniary compensation amounting to TRL 500,000,000. Basing itself on this information, the Government contended that the applicants had a remedy under domestic law whereby they could seek reparation for any harm flowing from their police custody.

50. The Court reiterates that paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (*Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p.14, §38). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

51. In this connection, the Court notes that in the present case it has found that the applicants' right to be brought promptly before a judge as well as their right to challenge the lawfulness of their police custody were infringed (see paragraphs 38, 39, 46 and 47 above). It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether or not Turkish law afforded the applicants an enforceable right to compensation for the breaches of Article 5 in this case.

52. Turning to the facts of the case, it is not in dispute that three of the applicants applied to Diyarbakır Assize Court and were subsequently awarded non-pecuniary compensation pursuant to Article 1 of Law No. 466. However, in awarding the compensation the national court based its assessment solely on the fact that the applicants had ultimately been

acquitted and did not examine whether the failure to bring them promptly before a judicial officer had been unlawful or otherwise in contravention with the first four paragraphs of Article 5 (*Medeni Kavak v. Turkey*, no. 13723/02, § 34, 3 May 2007; *Sinan Tanrıkulu and Others v. Turkey*, no. 50086/99, § 50, 3 May 2007). The Court further notes at this point that, although the applicants had been held in police custody for seven days without judicial scrutiny, this was in accordance with the domestic legislation at the time.

53. It follows that in the applicants' case, Law No. 466 does not provide for an enforceable right to compensation for their detention in police custody without the requisite judicial supervision which was in breach of Article 5 §§ 3 and 4, as required by Article 5 § 5 of the Convention.

There has therefore been a violation of that provision.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicants claimed 5,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

56. The Government contested these claims.

57. The Court does not discern any causal link between the violations found and the pecuniary damage alleged. It therefore rejects this claim.

58. However as regards non-pecuniary damage, deciding on an equitable basis, the Court awards EUR 2,000 each to Ms Oya Aslan, Mr Ulaş Aday and Mr Şerif Güneş; and EUR 1,700 each to Mr Ali Kemal Mart, Mr Göksel Avcı and Mr Ertuğrul Saraçoğlu in respect of non-pecuniary damage.

B. Costs and expenses

59. Referring to the Diyarbakır Bar Association's scale of fees the applicants also claimed EUR 8,855 for the costs and expenses incurred before the Court.

60. The Government contested this claim.

61. 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 applicants have not substantiated that they have actually incurred the costs so claimed. Accordingly, it makes no award under this head.

C. Default interest

62. 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 concerning Article 5 §§ 3, 4 and 5 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 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) to each to Ms Oya Aslan, Mr Ulaş Aday and Mr Şerif Güneş; and EUR 1,700 (one thousand and seven hundred euros) each to Mr Ali Kemal Mart, Mr Göksel Avcı and Mr Ertuğrul Saraçoğlu 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President