



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

SECOND SECTION

CASE OF CENGİZ POLAT v. TURKEY

(Application no. 40593/04)

JUDGMENT

STRASBOURG

11 December 2007

FINAL

11/03/2008

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 Cengiz Polat 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. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 20 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 40593/04) 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 Cengiz Polat (“the applicant”), on 15 October 2004.

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

3. On 6 November 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**

4. The applicant was born in 1965. He is currently detained in the Edirne F-type Prison.

5. On 6 February 1993 the applicant was arrested and placed in police custody by officers from the Anti-terror branch of the Istanbul Security Directorate on suspicion of involvement in the activities of an illegal armed organisation, the TKP/ML-TIKKO (the *Turkish Communist Party/Marxist Leninist -Turkish Workers and Peasants' Liberation Army*).

6. On 15 February 1993 the applicant was brought before the public prosecutor and then the investigating judge at the Istanbul State Security Court. On the same day the investigating judge remanded the applicant in custody pending trial.

7. By an indictment dated 5 April 1993, the public prosecutor initiated criminal proceedings against the applicant and nineteen other defendants before the Istanbul State Security Court, accusing them, *inter alia*, of membership of an illegal armed organisation and of involvement in activities which undermined the constitutional order of the State. The prosecution sought the death penalty under Article 146 § 1 of the Criminal Code.

8. In the course of the proceedings, the State Security Court rejected the applicant's requests for release, taking into account the nature of the alleged offence and the state of the evidence.

9. On 12 June 2000 the applicant was convicted as charged by the Istanbul State Security Court and sentenced to life imprisonment.

10. On 15 May 2001 the Court of Cassation quashed the applicant's conviction for procedural reasons. The case was remitted to the Istanbul State Security Court for further examination and the applicant remained in custody.

11. On 7 May 2004 State Security Courts were abolished following a constitutional amendment and the applicant's case was transmitted to the Istanbul Assize Court. In the course of the proceedings, the domestic courts rejected the applicant's requests for release, taking into account the nature of the alleged offence and the documents in the case file. The applicant challenged these decisions under Article 298 of the Criminal Procedure Code; however, the domestic courts rejected all his requests.

12. On 31 January 2005 the Istanbul Assize Court found the applicant guilty and sentenced him to life imprisonment under Article 146 § 1 of the Criminal Code.

13. On 20 March 2006 the Court of Cassation quashed the decision of the Assize Court and the case file was remitted to Istanbul Assize Court.

14. On 4 October 2006 the applicant was released pending trial. According to the information in the case file, as submitted by the parties, the case is still pending before the Istanbul Assize Court.

THE LAW

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

15. The applicant complained that his detention pending trial had 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.”

16. The Government contested that argument.

A. Admissibility

17. The Government submitted that, as the applicant had lodged his complaint under Article 5 § 3 of the Convention on 15 October 2004, the time he had spent in detention between 6 February 1993 and 12 June 2000 should be ruled out for having been lodged outside the six-month time-limit.

18. The Court refers to the principles adopted in the *Solmaz v. Turkey* judgment (no. 27561/02, § 36, ECHR 2007-...), 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 start running only from the end of the last period. Therefore, the six-month period should start running only from the end of the last period of detention, namely 4 October 2006.

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

20. The Court further notes that 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.

B. Merits

21. The Government submitted that the Istanbul State Security Court had not unduly prolonged the applicant's detention pending trial. The offence with which the applicant had been charged was of a serious nature.

22. The applicant reiterated that he had been detained pending trial for an excessive length of time.

23. The Court notes that, as explained above, the period in question began on 6 February 1993 with the applicant's arrest and ended on 4 October 2006 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

periods between 12 June 2000 and 15 May 2001 and between 31 January 2005 and 20 March 2006 – from the total time that he was deprived of his liberty, the period to be taken into consideration in the instant case is over eleven years and six months.

24. During this period, the domestic courts prolonged the applicant's detention pending trial using identical, stereotyped terms, such as “having regard to the nature of the offence, the state of the 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 particular 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 detention. In the Court's view, although, in general, the expression “the state of the evidence” may be a relevant factor in the existence and persistence of serious indications of guilt, nevertheless in the present case it, alone, cannot justify the length of detention of which the applicant complains (see the following judgments: *Letellier v. France*, 26 June 1991, Series A no. 207, § 43; *Tomasi v. France*, 27 August 1992, Series A no. 241-A; *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, § 55).

25. 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. 1)*, no. 19735/02, 10 May 2007; *Dereci v. Turkey*, no. 77845/01, 24 May 2005; *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006).

26. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion. Having regard to its case-law on the subject, it considers that in the instant case the length of the applicant's detention pending trial was excessive and contravened Article 5 § 3 of the Convention.

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

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

28. The applicant submits that the manner in which the domestic courts reviewed his detention pending trial breached the Convention. He maintains in this respect that, when the domestic courts delivered their decisions,

neither he nor his representative was able to attend the proceedings and the decisions were delivered solely on the basis of the case file.

29. This part of the applicant's complaint must be examined under 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

30. 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 maintained that the applicant had not relied on Article 5 of the Convention at any stage before the domestic authorities.

31. The Court observes that admissibility issue here is closely linked to the consideration of the complaint under Article 5 § 4. It therefore joins it to the merits.

B. Merits

32. The Government rejected the allegations.

33. The Court notes that the law at the time did not allow the applicant or his lawyer to attend the court sessions and the reviews were carried out solely on the basis of the papers in the file. As a result, the applicant was not able to receive the benefit of a procedure that was genuinely adversarial. The Court recalls its judgment in the case of *Bağrıyanık v. Turkey* (no. 43256/04, 5 June 2007) where it had examined a similar issue and found a violation of Article 5 § 4 of the Convention. The Court finds no particular circumstances in the instant case which would require it to depart from its previous findings.

34. Consequently, the Court concludes that there has been a violation of Article 5 § 4 of the Convention.

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

35. The applicant complained under Article 6 § 1 of the Convention of the length of the criminal proceedings, which are still pending after more than fourteen years. 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...”

36. 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.

37. The Government submitted that the case was complex, considering the charges against the applicant and the need to organise a large-scale trial involving nine defendants and numerous witnesses. They contended that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities.

38. The Court observes that the proceedings began on 6 February 1993 with the applicant's arrest and, according to the information available in the case file, are still pending before the Istanbul Assize Court. The case was thus examined four times at two levels of jurisdiction over a period of some fourteen years and seven months as of the adoption of the present judgment.

39. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to that in the present application (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II; *Ertürk v. Turkey*, no. 15259/02, 12 April 2005).

40. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. Lastly, the applicant complained under Article 5 § 1 (a) that the length of his police custody had exceeded a reasonable time.

43. The Government contended that this complaint was inadmissible for non-compliance with the six-month rule.

44. The Court reiterates that, where no domestic remedy is available, the six-month period runs from the date of the act alleged to constitute a violation of the Convention (*Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004).

45. The Court observes that the applicant's police custody ended on 15 February 1993. The applicant, however, lodged his application with the Court on 15 October 2004, that is more than six months later.

46. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 70,000 new Turkish liras (YTL) (approximately 40,000 euros (EUR)) in respect of pecuniary damage and YTL 100,000 (approximately EUR 57,000) for non-pecuniary damage. In respect of pecuniary damage, the applicant referred to the excessive length of the criminal proceedings and the time he had spent in detention pending trial, as a result of which he had not been able to work.

49. The Government contested the amounts.

50. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 12,500 for non-pecuniary damage.

B. Costs and expenses

51. Referring to the Istanbul Bar Association's scale of fees, the applicant's representative claimed YTL 210,740 (approximately EUR 120,000) for 189 hours' legal work, spent during the domestic proceedings as well as in the preparation and presentation of the instant case before the Court.

52. The Government contested these claims.

53. 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, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,500 for costs and expenses.

C. Default interest

54. 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 Articles 5 §§ 3 and 4 and Article 6 § 1 of the Convention 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 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 according to Article 44 § 2 of the Convention, EUR 12,500 (twelve thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 11 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President