



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

SECOND SECTION

CASE OF HACI ZEKİ UZUN v. TURKEY

(Application no. 11564/02)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 Hacı Zeki Uzun v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Rıza Türmen,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 11564/02) 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 Hacı Zeki Uzun (“the applicant”), on 21 March 2000.

2. The applicant was represented by Ms A. Bingöl and Ms G. Kartal, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 September 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, a gynaecologist, was born in 1956 and lives in İzmir.

5. In the course of an investigation into the PKK (the Kurdistan Workers’ Party), an illegal armed organisation, the applicant’s name was mentioned by a few detainees suspected of membership of that organisation

and a convicted confessor (*itirafçı*)¹ as having provided assistance to that organisation.

6. On 19 October 1999, at around 6.30 p.m., the applicant was arrested and taken into police custody at his medical practice. The applicant claims that he was arrested in a humiliating manner, in front of his staff and patients, and that he was sworn at and beaten in the police car.

7. On 20 October 1999 the applicant's house and medical practice was searched. The applicant claims that the police officers continued to swear, threaten and humiliate him on this occasion.

8. The Government submitted that the applicant's detention in police custody was first prolonged, on 21 October 1999, for an additional two days by the prosecutor and later prolonged, on 23 October 1999, for an additional three days by a judge at the State Security Court.

9. The applicant alleges that, while he was in police custody, he was ill-treated. In particular, he complains of having received electric shocks, of having been suffocated, and of having been beaten and threatened. He also alleges that, during the first three days of his detention, he had been deprived of food and medication and prevented from sleeping.

10. On 25 October 1999 the applicant was heard first by the public prosecutor and later by a judge at the İzmir State Security Court. The latter ordered his release from custody.

11. Following the applicant's complaint, the İzmir public prosecutor instigated an investigation into the events. On 26 November 1999 the İzmir public prosecutor decided not to prosecute the police officers at the anti-terror branch of the İzmir Security Directorate. In its decision the prosecution noted that none of the persons put forward as witnesses by the applicant were able to confirm the applicant's version of events, that the applicant was unable to identify the alleged perpetrators and that none of the medical reports, dated 19 October 1999, 23 October 1999 and 25 October 1999 save for one dated 11 November 1999, i.e. fifteen days after the events, noted any physical findings of ill-treatment. The applicant did not object to this decision.

12. The criminal proceedings brought against the applicant before the İzmir State Security Court for aiding and abetting an illegal armed organisation ended on 23 May 2000 with his acquittal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. A description of the relevant domestic law can be found in *Öcalan v. Turkey* ([GC], no. 46221/99, ECHR 2005-IV) and *Sakık and Others*

¹ The Turkish word "*itirafçı*" indicates a member of an illegal organisation who has defected and provides the authorities with information about that organisation.

v. Turkey (26 November 1997, *Reports of Judgments and Decisions* 1997-VII).

THE LAW

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

14. The applicant complained that the length of his detention in police custody was in breach of Article 5 § 3 of the Convention, which provides as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power.”

A. Admissibility

15. 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 his detention in police custody pursuant to Article 128 § 4 of the Criminal Code, Article 13 § 2 of Law no. 2845 and Articles 297-304 of the Criminal Code of Procedure. They further claimed that he could have sought compensation for having been unlawfully arrested or detained, pursuant to Law no. 466.

16. The applicant did not specifically deal with the Government’s arguments under this head.

17. The Court reiterates that it has already examined and rejected the Government’s preliminary objection in similar cases (see, in particular, *Ayaz and Others v. Turkey*, no. 11804/02, §§ 23-24, 22 June 2006; *Hacı Özen v. Turkey*, no. 46286/99, § 71, 12 April 2007; *Keklik and Others v. Turkey*, no. 77388/01, §§ 29-30, 3 October 2006; and *Ferhat Berk v. Turkey*, no. 77366/01, §§ 21-22 and 26-27, 27 July 2006). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in these applications.

18. In view of the above, the Court rejects the Government’s preliminary objection.

19. 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

1. *The parties' submissions*

20. The Government maintained that the applicant's custody period was in full conformity with the domestic legislation in force at the time of the incident. They pointed out, however, that the detention periods laid down under Turkish law had been subsequently amended in compliance with the case-law of the Court.

21. The applicant maintained his allegations.

2. *The Court's assessment*

22. The Court observes that the applicant's detention in police custody lasted a little less than six days. It reiterates that, in the case of *Brogan and Others v. the United Kingdom* (judgment of 29 November 1988, Series A no. 145 B, pp. 33-34, § 62), it found 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 (see, amongst others, *Keklik and Others*, § 41, cited above).

23. In the light of the principles enunciated in the *Brogan* case, the Court cannot accept that it was necessary to detain the applicant for such a long time without judicial intervention, even if the activities of which the applicant stood accused were serious.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. In his application form and later submissions, the applicant further complained under Articles 3, 5, 6 and 8 of the Convention. In particular, he complained that he had been ill-treated during his arrest and detention in police custody, that he had been denied a fair hearing within a reasonable time by an independent and impartial tribunal on account of the presence of a military judge on the bench of the State Security Court which tried him, that his house had been unlawfully searched and that his telephone lines had been unlawfully tapped. The applicant also claimed that his arrest was unlawful because of the manner in which he was arrested and that he was not informed promptly of the reasons for it. Finally, he submitted that his right to be presumed innocent had been infringed as a result of the publication of the preliminary investigation by the press and that the domestic courts had failed to hear his witnesses.

26. The Government raised a number of objections regarding the admissibility of these complaints.

27. However, the Court does not find it necessary to examine these objections since, in the light of all the materials in its possession, the Court finds that the applicant's submissions outlined at paragraph 25 above do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

28. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed, in total, 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

31. The Government contested the amount.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed EUR 10,000 for the costs and expenses incurred both before the domestic instances and the Court.

34. The Government contested the amount.

35. Since the applicant submitted no justification for this claim, as required by Rule 60 of the Rules of Court, the Court makes no award.

C. Default interest

36. 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 detention in police custody 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*
 - (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 1,000 (one thousand euros) in respect of non-pecuniary damage, 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 above-mentioned 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 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President