



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

THIRD SECTION

CASE OF MEHMET BİLEN v. TURKEY

(Application no. 5337/02)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Mehmet Bilen v. Turkey,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Rıza Türmen,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 5337/02) 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, Mehmet Bilen (“the applicant”), on 18 October 2001.

2. The applicant was represented by Mr S. Çınar, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 24 May 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the applicant’s detention in police custody, the lack of an effective remedy to challenge the lawfulness of this detention and the absence of a remedy in domestic law to obtain compensation for the alleged violation of Article 5 of the Convention 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 was born in 1960 and lives in Diyarbakır.

5. On 9 April 2001 the applicant was arrested and taken into police custody.

6. On 11 April 2001 the applicant's detention in police custody was prolonged for an additional period of two days, without his presence, by the public prosecutor at the Diyarbakır State Security Court.

7. On 13 April 2001 the applicant's detention in police custody was prolonged for an additional period of six days, without his presence, by the Diyarbakır State Security Court.

8. On 18 April 2001, before the additional six-day period had expired, the applicant was brought before the public prosecutor at the Diyarbakır State Security Court who ordered his release.

9. The criminal proceedings against the applicant for membership of an illegal organisation are still pending before the Diyarbakır Assize Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. A description of the relevant domestic law at the material time can be found in *Fatma Tunç v. Turkey*, (no. 16608/02, § 15, 20 October 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 3, 4 AND 5 OF THE CONVENTION

11. The applicant complained about the length of his detention in police custody, the absence of an effective remedy to challenge the lawfulness of this detention and the absence of a remedy in domestic law to obtain compensation for the alleged violation of Article 5 of the Convention. He relied on Article 5 §§ 3, 4 and 5 of the Convention, which reads as follows:

“3. 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 and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

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 his detention in police custody pursuant to Article 128 § 4 of Code of Criminal Procedure, and that he could also have sought compensation pursuant to Law no. 466 concerning the payment of compensation to persons unlawfully arrested or detained.

13. The applicant maintained his 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, *Ayaz and Others v. Turkey*, no. 11804/02, §§ 23-24, 22 June 2006, *Şevk v. Turkey*, no. 4528/02, § 24, 11 April 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). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned 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

1. *The parties' submissions*

16. The Government maintained, firstly, that the applicant's custody period was in absolute conformity with the domestic legislation in force at the time of the incident. They, however, pointed out that the detention periods laid down under Turkish law had been subsequently amended in compliance with the case-law of the Court. Secondly, the Government contended that Article 128 of the Code of Criminal Procedure provides an effective remedy to challenge the lawfulness of the detention. Finally, they reiterated that the applicant could have requested compensation within three months following the final decision of the trial court under the terms of Law no. 466 on compensation payable to persons unlawfully arrested or detained.

17. The applicant maintained his allegations.

2. *The Court's assessment*

a) Article 5 § 3

18. The Court observes that the applicant's detention in police custody lasted nine 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).

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

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

b) Article 5 §§ 4 and 5

21. The Court has examined similar cases on previous occasions and has found violations of Article 5 §§ 3 and 4 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicant could have contested the lawfulness of his detention in police custody and obtain compensation to that effect (see, in particular, *Bazancir and Others v. Turkey*, nos. 56002/00 and 7059/02, §§ 30-32, 11 October 2005, *Mehmet Mübarek Küçük v. Turkey*, no. 7035/02, § 31, 20 October 2005, *Uçar v. Turkey*, no. 52392/99, § 122, 11 April 2006, *Keklik and Others*, §§ 46-48 and 52, and *Ferhat Berk*, §§ 21-22 and 25-27, both cited above). It finds no reason to depart from that conclusion in the present case.

22. There has accordingly been a breach of Article 5 §§ 4 and 5 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 200 euros (EUR) in respect of pecuniary damage and EUR 7,000 in respect of non-pecuniary damage.

25. The Government contested the amounts.

26. The Court finds the applicant's pecuniary damage claim unsubstantiated. It therefore dismisses it. On the other hand, it accepts that the applicant suffered non-pecuniary damage such as distress resulting from his detention for nine days without the opportunity to challenge its lawfulness, which cannot be sufficiently compensated by the finding of a violation. Having regard to its case-law, and making its assessment on equitable basis, the Court awards the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant also claimed EUR 1,645 for the costs and expenses incurred before the Court. The applicant relied on the Turkish Bar Association's recommended fees list. He, however, did not submit any receipts or any other relevant documents.

28. The Government contested the amount.

29. Since the applicant submitted no substantiation of his costs and expenses claim, as required by Rule 60 of the Rules of Court, the Court makes no award under this head.

C. Default interest

30. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 §§ 3, 4 and 5 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 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 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President