



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

THIRD SECTION

CASE OF MÜNİRE DEMİREL v. TURKEY

(Application no. 5346/03)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Münire Demirel 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,

Alvina Gyulumyan,

Ineta Ziemele,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 5346/03) 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, Ms Münire Demirel (“the applicant”), on 12 November 2002.

2. The applicant was represented by Mr M.A. Kırdök and Mrs M. Kırdök, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 May 2007 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 was born in 1967 and lives in Istanbul. At the time of her application to the Court, she was incarcerated in the Kartal Special Type Prison.

5. On 4 February 1995 the applicant was taken into police custody on suspicion of membership of an illegal organisation, the *Dev-Sol* (Devrimci Sol – Revolutionary Left).

6. On 16 February 1995 the applicant was detained on remand.

7. On 21 February 1995 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and charged her with membership of an illegal organisation under Article 168 § 1 of the Criminal Code.

8. On 28 April 1995 the Second Chamber of the Istanbul State Security Court held the first hearing in the case (case no.1995/76).

9. On 31 October 1995 the first-instance court ordered the applicant's release pending trial. However, the applicant was not released since on 9 October 1995 the public prosecutor at the Istanbul State Security Court had filed a new bill of indictment which resulted in a second case against the applicant before the First Chamber of the Istanbul State Security Court (case no. 1995/348). The applicant was charged with attempting to undermine the constitutional order under Article 146 of the Criminal Code.

10. On 3 September 1996 these two cases were joined under case no. 1995/348 before the First Chamber of the Istanbul State Security Court.

11. The applicant requested to be released pending trial at various times before the trial courts. The courts dismissed her requests either without giving any reason or having regard to the nature of the offence, the content of the case file and the state of evidence.

12. On 31 October 2002 the First Chamber of the Istanbul State Security Court once again dismissed the applicant's request for release pending trial.

13. On 4 November 2002 the applicant filed an objection against the decision of 31 October 2002.

14. On the same day the Second Chamber of the Istanbul State Security Court dismissed her request.

15. On 18 February 2003 the first-instance court ordered the applicant's release pending trial.

16. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, state security courts were abolished. The case against the applicant was thereby transferred to the Istanbul Assize Court. According to the information in the case file based on the latest submissions by the parties, the case is still pending before the Istanbul Assize Court.

II. THE RELEVANT DOMESTIC LAW

17. The relevant domestic law and practice in force at the material time are outlined in *Çobanoğlu and Budak v. Turkey*, (no. 45977/99, §§ 29-30, 30 January 2007).

THE LAW

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

18. The applicant complained that her detention on remand exceeded the “reasonable time” requirement as provided in Article 5 § 3 of the Convention, which reads insofar as relevant 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.”

A. Admissibility

19. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies under Article 35 § 1 of the Convention. Referring to the Court’s decision in the case of *Köse v. Turkey* ((dec.), no. 50177/99, 2 May 2006), the Government maintained that the applicant failed to object to her continued remand in detention pursuant to Article 298 of the former Code of Criminal Procedure (“the CCP”) until October 2002.

20. The applicant stated that she had not availed herself of this remedy earlier since she considered the remedy to be ineffective.

21. The Court notes that it has already examined and rejected this objection raised by the Government in similar cases (see, in particular, *Koştı and Others v. Turkey*, no. 74321/01, §§ 19-24, 3 May 2007; *Mehmet Şah Çelik v. Turkey*, no. 48545/99, §§ 22-31, 24 July 2007; and *Tamamboğa and Gül v. Turkey*, no. 1636/02, §§ 27-29, 29 November 2007). The Court held, particularly in *Koştı and Others* (cited above, §§ 18-19), that only available and adequate remedies had to be tried under Article 35 § 1 of the Convention and that the burden of proof was on the Government claiming non-exhaustion to satisfy the Court that a remedy was effective and available in theory and in practice at the relevant time, i.e. that it was accessible, was capable of providing redress in respect of the applicants’ complaints and offered reasonable prospects of success (see also *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 65, 27 June 2006). In this regard, the Court referred to certain cases against Turkey where violations of Article 5 § 3 of the Convention were found based on the fact that, *inter alia*, the State Security Courts used the same formal reasons for the applicants’ continued detention without explaining their specific relevance in each case, such as in the present application (see, among many others, *Hasan Ceylan v. Turkey*, no. 58398/00, 23 May 2006; *Pakkan v. Turkey*, no. 13017/02, 31 October 2006; and *Acunbay v. Turkey*,

nos. 61442/00 and 61445/00, 31 May 2005). It considered, accordingly, that an objection against such stereotype reasoning would have had little prospect of success before another instance. Moreover, as a rule, the objection proceedings in question were not adversarial and were decided in the absence of an oral hearing (see Article 302 § 1 of the CCP). They therefore lacked the guarantees appropriate to the kind of deprivation of liberty in question (*Koşti and Others*, cited above).

22. Having regard to the foregoing arguments, the Court finds no particular circumstances in the instant case which would require it to depart from its findings in the case of *Koşti and Others* (cited above).

23. The Court further reiterates that there is a distinction between the requirement of exhaustion of domestic remedies under Article 35 § 1 and the requirements of Article 5 § 3 of the Convention aimed at providing safeguards against arbitrary deprivation of liberty. However, where a consistent case-law shows that such safeguards fail or are deficient, it would be contrary to the very principle of the Convention and would lead to excessive formalism under Article 35 § 1 to demand of the applicant that she or he exhaust the inadequate safeguards (see *Estrikh v. Latvia*, no. 73819/01, § 97, 18 January 2007).

24. In the light of the above, the Court rejects the Government's objection.

25. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

26. The Government maintained that the length of the applicant's remand in custody had been reasonable and had been in compliance with the domestic law. In particular, they submitted that the seriousness of the crime, the risk of escape or the committal of a further crime, and the special circumstances of the case had justified her continued remand in custody. They further submitted that the domestic authorities had displayed diligence when considering the applicant's continued detention.

27. The applicant maintained her allegations and contested the Government's arguments.

28. The Court observes that, in the instant case, the applicant's detention on remand began on 4 February 1995 when she was taken into police custody and ended on 18 February 2003 upon her release by an order of the first-instance court. It thus lasted approximately eight years.

29. 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, *Dereci v. Turkey*, no. 77845/01, 24 May 2005; *Tacıroğlu*

v. Turkey, no. 25324/02, 2 February 2006; and *Çarkçı v. Turkey*, no. 7940/05, 26 June 2007).

30. 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 in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant's detention on remand was excessive and contravened Article 5 § 3 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government requested the Court not to award any damages.

35. The Court 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, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant also claimed 4,600 new Turkish liras (TRY) (approximately EUR 2,695) for the legal expenses incurred before the Court and TRY 210 (approximately EUR 123) for other expenses, such as stationery, photocopying and mailing costs. The applicant documented the legal expenses of TRY 4,600 on the basis of the legal fees agreement executed with her lawyer. Regarding her other expenses, however, she submitted an expense report prepared by her lawyers, without including any invoice.

37. The Government contested these claims.

38. According to the Court's case-law, an applicant is entitled to the 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 ruling on an equitable basis, the Court awards the applicant EUR 1,000 under this head.

C. Default interest

39. 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 application admissible;
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, the following amounts to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President