



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

SECOND SECTION

CASE OF HABİP ÇİFTÇİ v. TURKEY

(Application no. 28485/03)

JUDGMENT

STRASBOURG

23 September 2008

FINAL

23/12/2008

This judgment may be subject to editorial revision.

In the case of Habip Çiftçi v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 28485/03) 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, Mr Habip Çiftçi (“the applicant”), on 21 July 2003.

2. The applicant was represented by Ms Hacer Çekiç, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 4 September 2007 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the applicant’s right to release pending trial, his right to take proceedings to challenge the lawfulness of his detention and his right to a fair trial within a reasonable time. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1973 and is currently detained in Ümraniye prison, Istanbul.

5. On 4 September 1995 the applicant was arrested in Istanbul on suspicion of membership of an illegal organisation. He was placed in custody at the anti-terrorist branch of the Istanbul Police Headquarters.

6. On 13 September 1995 he was questioned by police officers and on 17 October 1995 he was handed over to police officers in the south-eastern city of Batman and placed in police custody there. On 30 October 1995 police officers from the Batman Police Headquarters questioned the applicant. In his statements he submitted that he had been trained at PKK¹ camps before being sent to Istanbul where his health deteriorated.

7. On 2 October 1995 the applicant was brought before the Batman Chief Public Prosecutor for questioning. The same day the applicant was also questioned by the judge at the Batman Criminal Court of Peace. The judge ordered his detention in Batman prison pending the initiation of criminal proceedings against him.

8. On 11 October 1995 the prosecutor at the Diyarbakır State Security Court filed an indictment with that court and charged the applicant with the offence of membership of an illegal organisation, an offence which was defined in Article 168 of the Criminal Code and which carried a maximum sentence of fifteen years' imprisonment. The applicant's trial began before the Diyarbakır State Security Court on 17 October 1995.

9. In the course of its ninth hearing held on 11 December 1996, the Diyarbakır Security Court noted that another set of criminal proceedings had been initiated against the applicant on 31 July 1996 on the basis of an indictment filed on 23 July 1996, and that those proceedings were pending before the 3rd Chamber of the Istanbul State Security Court. In those proceedings the applicant was being tried *in absentia* for the offence of carrying out activities for the purpose of bringing about the secession of a part of the national territory, an offence which was defined in Article 125 of the Criminal Code and which provided for the death penalty as the sole punishment. The Diyarbakır State Security Court considered that both cases were similar, and decided to join them before the 3rd Chamber of the Istanbul State Security Court. The judge also ordered the applicant's transfer to a prison in Istanbul.

10. A hearing took place before the 3rd Chamber of the Istanbul State Security Court on 17 January 1997 in the applicant's absence.

11. In the course of its sixth hearing held on 7 March 1997, the 3rd Chamber of the Istanbul State Security Court noted that criminal proceedings were pending against a certain İ.K. before the 1st Chamber of the Istanbul State Security Court concerning the killing of a village guard. Having regard to the evidence which had the potential to prove that the applicant had also been involved in that killing, the court decided to join the cases. The 1st Chamber of the Istanbul State Security Court took over the trial.

¹ The Kurdistan Workers' Party, an illegal organisation.

12. After having joined the three cases, the 1st Chamber of the Istanbul State Security Court (hereinafter “the trial court”) held its first hearing of the case on 10 April 1997. The applicant was not present at this hearing.

13. Between 10 April 1997 and 31 October 2000 – i.e. for a period of more than three and a half years – the trial court continued its hearings in the absence of the applicant because it was unable to establish the prison in which the applicant was being detained.

14. When the authorities finally succeeded in ascertaining where the applicant was being held, the trial court held its first hearing in the presence of the applicant on 31 October 2000. In the course of that hearing the applicant was informed about the additional charges which had been brought against him on 23 July 1996 under Article 125 of the Criminal Code and the joinder of his cases to that of İ.K. The applicant rejected the accusations and submitted that he had been in prison at the time of the commission of the offences. Having regard to “the nature of the offences in question and the evidence in the file, as well as the date of his arrest and detention and the current stage of the proceedings”, the trial court rejected the applicant’s request for release.

15. In the course of the hearing on 12 June 2003, the applicant’s request for release was rejected by the trial court on the basis of “the nature of the offence in question and the evidence in the file”.

16. On 17 June 2003 the applicant’s lawyer lodged a formal objection against the trial court’s decision and reminded the court of his client’s rights under Article 5 of the Convention. This objection was examined by the 2nd Chamber of the Istanbul State Security Court and rejected on 19 June 2003.

17. Following the abolition of the State Security Court, the case file was transferred to the docket of the 9th Chamber of the Istanbul Assize Court (hereinafter “the trial court”), which held its first hearing on 20 July 2004.

18. In the course of the hearing on 7 October 2004, the applicant once more reminded the trial court of his rights under Article 5 of the Convention and requested his release. This request was rejected on the same grounds relied on by the previous trial court.

19. During the hearing on 11 April 2006, the applicant again asked to be released. This request was also rejected by the trial court on account of the “sentence which would be imposed if he were to be found guilty”. The applicant’s objection to that decision was examined by the 10th Chamber of the Istanbul Assize Court and rejected because of “the nature of the offence in question and the existence of a strong suspicion that the applicant had committed the offence in question”.

20. The applicant’s requests for release have all been rejected in the subsequent three hearings held between 15 May 2007 and 15 November 2007.

21. During the hearing held on 27 December 2007, the trial court found the applicant guilty as charged and sentenced him to life imprisonment. It also decided that the applicant should never be released from the prison.

22. The appeal lodged by the applicant against his conviction is currently pending before the Court of Cassation.

THE LAW

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

23. The applicant complained under Article 5 § 3 of the Convention that the length of his detention on remand had been excessive. He also complained that the trial court's failure to ensure his attendance at the trial between 11 December 1996 and 31 October 2000 had prevented him from taking proceedings to have the lawfulness of his detention determined, in violation of Article 5 § 4 of the Convention. Article 5 § 3 and 4 of the Convention read as follows:

“3. 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.

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”.

24. The Government contested those arguments.

A. Admissibility

25. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

26. As for the complaint under Article 5 § 3 of the Convention concerning the applicant's right to release pending trial, the Government submitted that the applicant's detention during his trial had been in the interests of public safety and necessary on account of the risks of his reoffending or destroying the evidence against him.

27. The Government did not address the complaint under Article 5 § 4 of the Convention in their observations.

28. The applicant maintained his allegations.

1. Article 5 § 3 of the Convention

29. The Court observes that the applicant's detention on remand began on 4 September 1995 when he was taken into police custody. It ended on 27 December 2007 when the charge against him was determined by the court of first instance (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 23 § 9). He was thus detained on remand for a period in excess of twelve years and three months.

30. 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, most recently, *Münire Demirel v. Turkey*, no. 5346/03, § 29, 20 May 2008 and the cases cited therein).

31. 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.

32. In light of the foregoing, the Court finds that the length of the applicant's detention on remand was excessive.

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

2. Article 5 § 4 of the Convention

34. The Court does not deem it necessary to examine whether the authorities' failure to ensure the applicant's attendance at the trial during the above-mentioned four-year period prevented him from having the lawfulness of his detention determined. The Court notes that, in any event, it has already found that the existing remedy by which the lawfulness of the applicant's detention could have been challenged during that period offered little prospect of success in practice and that it did not provide a procedure which was genuinely adversarial for the accused (see *Koştı and Others v. Turkey*, no. 74321/01, § 22, 3 May 2007; *Bağrıyanık v. Turkey*, no. 43256/04, §§ 50 and 51, 5 June 2007; *Doğan Yalçın v. Turkey*, no. 15041/03, § 43, 19 February 2008). The Court finds no particular circumstances in the instant case which would require it to depart from its previous findings.

35. In light of the foregoing the Court concludes that there has been a breach of Article 5 § 4 of the Convention.

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

36. The applicant complained that the length of the criminal proceedings against him had been in breach of the reasonable time requirement in Article 6 § 1 of the Convention which provides, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

37. The Government rejected that claim and argued that the proceedings were complex and that the applicant’s delays in the submission of his written defence to the trial contributed to the length of the proceedings. In the Government’s opinion, the trial court displayed diligence in conducting the case and held hearings at regular intervals.

38. The Court observes that the criminal proceedings against the applicant began on 4 September 1995 when the applicant was arrested and, according to the information available in the case file, were still pending before the Court of Cassation on the date of the adoption of the present judgment. They have thus been pending for thirteen years before two levels of jurisdiction.

A. Admissibility

39. 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.

B. Merits

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case. Particular regard must be had to the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

41. The Court agrees with the Government that the subject matter of the case is complex, requiring, as it does, the determination of a number of serious allegations against the applicant and a number of other defendants. Nevertheless, having regard to the conduct of the authorities, the Court is not convinced that the criminal proceedings in question have been conducted within a reasonable time.

42. It is to be noted, in particular, that for a period of more than three and a half years the trial court held hearings in the absence of the applicant

because it was unable to establish the prison in which he was being detained (see paragraph 13 above). No explanation was offered by the respondent Government for that period. In the opinion of the Court, the failure of the trial court to ensure the applicant's attendance at the trial during that period contributed substantially to the total length of the proceedings.

43. Furthermore, the Court considers that the total length of the proceedings before the trial court so far – i.e. thirteen years – cannot be explained by the delays allegedly caused by the applicant in the submission of his defence.

44. In light of the foregoing, the Court holds that the “reasonable time” requirement of Article 6 § 1 has been exceeded. Consequently, there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 11,500 euros (EUR) in respect of pecuniary damage and EUR 17,000 for non-pecuniary damage.

47. The Government argued that the sums claimed were excessive and were not supported by documentary evidence.

48. The Court observes that the applicant has not produced any documents in support of his claims for pecuniary damage. It accordingly dismisses that claim. However, the Court accepts that the applicant must have suffered certain non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Having regard to comparable cases, and making an assessment on an equitable basis, the Court awards him EUR 15,000 under this head.

49. The applicant also invited the Court to recommend to the respondent Government his release from prison, which, in his opinion would constitute the most appropriate remedy.

50. The Court recalls that, in its judgment in the case of *Yakışan v. Turkey* (no.11339/03, § 49, 6 March 2007) it considered that an appropriate means of remedying the situation of an applicant, who had been detained on remand for an excessive period, would be to conclude the criminal proceedings against him as speedily as possible, while taking into account the requirements of the proper administration of justice, or to

release him during the proceedings. However, when the Court adopted that judgment, Mr Yakışan was being detained as a remand prisoner, pending the conclusion of the criminal proceedings against him. In the present case, however, the applicant was found guilty and convicted by the trial court on 27 December 2007. In other words, he is no longer a remand prisoner, but is being detained pursuant to Article 5 § 1 (a) of the Convention (see, *mutatis mutandis*, *Wemhoff*, cited above, § 9). It follows that the Court cannot grant the applicant's request.

B. Costs and expenses

51. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court. This sum consisted of EUR 2,000 for his legal representative's fees and EUR 500 for translation expenses for which the applicant submitted an invoice.

52. The Government contested the applicant's claims.

53. 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 the above criteria, the Court considers it reasonable to award the global sum of EUR 2,000 to cover all the applicant's costs.

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 application admissible;
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 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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 2,000 (two 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President