



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

SECOND SECTION

CASE OF AYHAN AND OTHERS v. TURKEY

(Application no. 29287/02)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Ayhan and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, Section Registrar,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 29287/02) 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 three Turkish nationals, Mr Mehmet Ali Ayhan, Mr Ali Akkurt and Mr Şükrü Töre (“the applicants”), on 11 June 2002.

2. The applicants were represented by Mr M.A. Kırđök and Mrs M. Kırđök, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent for the purposes of the proceedings before the Court.

3. On 11 December 2006 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1961, 1959 and 1964 respectively.

A. The criminal proceedings against Mr Ayhan

5. In the course of a police operation against an illegal armed organisation, namely the TKEP (the Communist Labour Party of Turkey),

the police arrested and detained Mr Ayhan in police custody on 5 May 1993. The applicant had fake identity papers on him at the time of the arrest.

6. He was subsequently brought before a judge who remanded him in custody on 19 May 1993.

7. By an indictment dated 30 July 1993, the public prosecutor initiated criminal proceedings against the applicant and other accused before the Istanbul State Security Court, accusing the applicant, *inter alia*, of participation in activities which undermined the constitutional order of the State. These included aggravated theft from various jewellery shops and involvement in the killing of Mr Y.I. and Mr M.Ö in 1990 and 1991 respectively. The prosecution sought the death penalty under Article 146 § 1 of the Criminal Code.

8. In the course of the proceedings before the Istanbul State Security Court, the latter considered the applicant's detention at the end of each hearing of its own motion and each time it ordered continued detention with reference to the nature of the offence, the state of the evidence and the content of the case file. At the hearing held on 28 January 1997, the applicant requested to be released for the first time. The court ordered the continuation of his detention, having regard to the nature of the offences with which he was charged and the state of the evidence. Thereafter until 30 May 2000 the applicant did not specifically request release. However, the court continued of its own motion to examine the applicant's detention and ordered it to be continued on the same grounds as before. Between the hearings held on 30 May 2000 and 24 February 2004, the court considered the applicant's detention regularly, either of its own motion or at the request of the applicant, and each time it ordered his continued detention, having regard to the nature of the offence, the state of the evidence and the content of the case file.

9. On 24 February 2004 the Istanbul State Security Court convicted the applicant as charged and sentenced him to life imprisonment. This judgment was upheld by the Court of Cassation on 4 October 2004.

B. The criminal proceedings against Mr Akkurt and Mr Töre

10. On 10 February 1994 the second applicant, Mr Akkurt, and the third applicant, Mr Töre, were arrested and taken into custody on suspicion of involvement in the activities of the above-mentioned organisation. They were remanded in custody on 24 February 1994.

11. By an indictment dated 17 May 1994, the public prosecutor initiated criminal proceedings against the applicants and other accused before the Istanbul State Security Court, accusing the applicants, *inter alia*, of involvement in activities which undermined the constitutional order of the State. These included aggravated theft from various jewellery shops. The

prosecution sought the death penalty under Article 146 § 1 of the Criminal Code.

12. In the course of the proceedings before the Istanbul State Security Court, the latter considered the applicants' detention at the end of each hearing of its own motion, and each time it ordered their continued detention with reference to the nature of the offence, the state of the evidence and the content of the case file. At a hearing held on 5 August 1998, the applicants requested to be released for the first time. The court ordered the continuation of their detention, having regard to the nature of the offence and the length of their detention. Thereafter until 4 November 2002 the court considered the applicants' detention regularly, either of its own motion or at the request of the applicants, and each time it ordered their continued detention, having regard to the nature of the offence, the state of the evidence and the content of the case file. On 4 November 2002 the applicants, at their request, were released pending trial. The court took note, in determining their request for release, of the length of time the applicants had already spent in detention and the state of the evidence.

13. On 27 December 2006 the Istanbul Assize Court convicted the applicants as charged and sentenced them to life imprisonment. Their appeal against this decision is apparently pending before the Court of Cassation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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

15. The applicants complained that their detention during judicial proceedings exceeded the "reasonable time" requirement as provided in Article 5 § 3 of the Convention, which reads, in so far 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

16. The Government maintained under Article 35 § 1 of the Convention that the application must be rejected for non-exhaustion of domestic remedies or, alternatively, for failure to comply with the six-month rule. Under the first limb of their objections, the Government pointed out that the criminal proceedings against the applicants were still pending when they lodged their application with the Court. They also noted that the applicants had failed to object to the continuation of their detention until 5 August 1998. As regards the second limb of their objections, the Government argued that the applicants should have lodged their complaint within six months following the date on which they had realised the ineffectiveness of the domestic remedies, that is on 5 August 1998.

17. The applicants contested the Government's arguments.

18. The Court notes that it has already examined and rejected the Government's similar objections regarding exhaustion of domestic remedies in previous cases (see, in particular, *Özden Bilgin v. Turkey*, no. 8610/02, § 21, 14 June 2007, *Tamer and Others v. Turkey*, no. 235/02, § 28, 22 June 2006, and *Koştı and Others v. Turkey*, no. 74321/01, §§ 19-24, 3 May 2007). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned applications. In so far as the Government suggest that the applicants have failed to comply with the six-month rule, the Court reiterates that if an applicant submits complaints of the present kind to the Court while he is still in detention, the case cannot be dismissed as being out of time (see, in particular, *Ječius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX). In the instant case, the applicants were still in detention on remand when they lodged their Article 5 complaint with this Court. Consequently, the Court rejects the Government's objections under this head.

19. Moreover, the Court notes that this part of 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

1. The parties' submissions

20. The Government maintained that the seriousness of the crime and the existence of a genuine public interest justified the applicants' continued detention. In this connection they maintained that the aim was to avoid the risk that the accused would abscond or reoffend. The Government submitted that the custodial measure had been reviewed periodically by the competent authority in accordance with the requirements laid down by the applicable

law at the relevant time, and that the applicants had had the opportunity to object every time the court had continued their pre-trial detention.

21. The applicants disputed the Government's arguments. In particular, they submitted that they had contested not the decision to remand them in custody, but the continuation of their remand in custody when it had exceeded the reasonable time requirement of Article 5 § 3. In this respect, the applicants submitted that the compilation of the evidence in the criminal proceedings against them had been completed at the end of 1998 and that, therefore, their continued detention after this date had not had any bearing on the proper administration of justice. They pointed out that throughout the criminal proceedings the court, irrespective of whether the applicants had requested it or it had examined the matter of its own motion, had always used identical reasoning when prolonging their detention.

2. The Court's assessment

22. The Court reiterates the basic principles laid down in its judgments concerning Article 5 § 3 (see, in particular, *Sevgin and İnce v. Turkey*, no. 46262/99, § 61, 20 September 2005, *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001, *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV, *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 59, ECHR 2003-IX (extracts)), and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 43). It will examine the present case in the light of these principles.

23. In the instant case the first applicant's detention began on 5 May 1993, when he was arrested and taken into police custody, and ended on 24 February 2004, when he was convicted by the first-instance court. It thus lasted over ten years and nine months. The other applicants' detention began on 10 February 1994 with their arrest and ended on 4 November 2002 when the first-instance court ordered their release pending trial. It thus lasted approximately eight years and nine months. During this time, the first-instance court considered the applicants' continued detention at the end of each hearing either of its own motion or at the request of the applicant. However, the Court notes from the material in the case file that the State Security Court ordered the applicants' continued detention using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of the evidence".

24. 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, *Teslim Töre v. Turkey* (no. 2), no. 13244/02, 11 July 2006, *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006, and *Çarkçı v. Turkey*, no. 7940/05, 26 June 2007).

25. 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. In this respect, even assuming that a certain period of the applicants' detention should be deducted in the assessment of the "reasonable time" requirement under Article 5 § 3 of the Convention because they had not specifically asked to be released before 28 January 1997 and 5 August 1998 respectively, the Court considers that, having regard to its case-law on the subject, in the instant case, the length of the applicants' detention during these criminal proceedings was excessive and contravened Article 5 § 3 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. Mr Ayhan claimed 20,000 euros (EUR), and Mr Akkurt and Mr Töre each requested EUR 15,000 in respect of non-pecuniary damage.

29. The Government contested the amounts.

30. The Court considers that the applicants must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the particular circumstances of the case and having regard to its case-law, it awards Mr Ayhan EUR 6,000, and Mr Akkurt and Mr Töre EUR 4,000 each, for non-pecuniary damage.

B. Costs and expenses

31. The applicants also claimed, in total, 10,210 new Turkish liras [TRY] (approximately EUR 5,900) for the costs and expenses incurred before the Court. In support of their claims they submitted a legal fees agreement and a time sheet prepared by their legal representatives.

32. The Government contested the amount.

33. 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 applicants, jointly, EUR 1,000 under this head.

C. Default interest

34. 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 within three months from the date on which the judgment becomes final according to 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) to Mr Ayhan, and EUR 4,000 (four thousand euros), each, to Mr Akkurt and Mr Töre, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) to the applicants, jointly, plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President