



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

SECOND SECTION

CASE OF PEHLIVAN v. TURKEY

(Application no. 4233/03)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Pehlivan 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 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 4233/03) 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 Mehmet Pehlivan (“the applicant”), on 25 September 2002.

2. The applicant was represented by Mr A. Pehlivan, 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 be released pending trial, to a fair hearing within a reasonable time and to be informed promptly of the nature and cause of the accusations against him. 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 applicant was born in 1963 and lives in Istanbul.

5. On 5 April 1996 the Diyarbakır provincial gendarmerie command issued an arrest warrant in respect of the applicant, on the basis of which he was arrested and taken into custody on 12 April 1996 by police officers from the Anti-Terrorist Branch of the Istanbul Police Headquarters. Upon

his arrest, the applicant signed an arrest report acknowledging the warrant and the authorities' intention to transfer him to the Diyarbakır provincial gendarmerie command.

6. On 12 April 1996 a house search report was drafted by police officers from the Anti-Terrorist Branch of the Istanbul Police Headquarters which indicated that the applicant had been arrested on suspicion of affiliation to the PKK (the Kurdistan Workers' Party), an illegal organisation, and of having committed homicide. The report was signed by three police officers and the applicant.

7. After being held for two days in the Istanbul police headquarters, the applicant was transferred to Diyarbakır, where he was held in the custody of the gendarmerie until 25 April 1996.

8. On 22 April 1996 the applicant was questioned by officers from the Diyarbakır provincial gendarmerie command, where he was requested to provide information regarding his affiliation to the PKK and his involvement in the killing of a certain B.C. The applicant stated that he was a member of the PKK and that he had killed B.C. in compliance with orders he had received from that organisation.

9. On 25 April 1996 the applicant was brought before the Diyarbakır public prosecutor, where he alleged that he was not involved in the activities of the PKK. The applicant further contended that in 1992 he had killed B.C. in his village as he had suspected that his partner had had a relationship with him. The applicant stated that the murder was not linked to any terrorist activity. The statements that he had made at the gendarmerie command were read to him. The applicant denied having made them. Furthermore the statements of three other suspects, Ş.B., Ş.C. and S.B., who maintained that the applicant was a member of the PKK, were also read to him. The applicant rejected these statements, claiming that these persons were relatives of B.C.

10. On the same day, the applicant was brought before a single judge at the Diyarbakır State Security Court. He reiterated the statements which he had made before the public prosecutor. Following his questioning, the judge remanded the applicant in custody, holding that there were strong indications that he had committed the offence defined in Article 125 of the former Criminal Code, namely carrying out activities for the purpose of bringing about the secession of part of the national territory.

11. On 10 May 1996 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment against the applicant and six other persons. The applicant was charged under Article 125 of the former Criminal Code, and with killing B.C.

12. On 14 May 1996 the First Division of the Diyarbakır State Security Court held a hearing and ordered the applicant's continued detention on remand in view of the nature of the offence, the state of evidence and the content of the case file.

13. On 19 August 1996 the applicant made statements before the first-instance court, denying the charges against him.

14. Between 19 August 1996 and 29 December 1997, the first-instance court postponed the hearings as it was awaiting information and documents from the Lice public prosecutor's office.

15. On 29 December 1997 the State Security Court requested the Lice gendarmerie command to provide information concerning the killing of B.C. The court subsequently postponed the hearings until 24 December 1998 on account of the failure of the gendarmerie command to submit the relevant information.

16. On 22 November 1999 the First Division of the Diyarbakır State Security Court requested the Third Division of the same court to submit a copy of the file in the case brought against Ş.B., Ş.C. and S.B. Between 22 November 1999 and 4 September 2001, the trial court postponed the hearings as the Third Division failed to submit a copy of the case file.

17. During the trial, the Diyarbakır State Security Court held forty-five hearings. At the end of every hearing the first-instance court considered the applicant's detention during judicial proceedings, either of its own motion or at the applicant's request. It ordered the applicant's continued detention pending trial, having regard to the nature of the offence and the state of the evidence.

18. On 26 March 2002 the Diyarbakır State Security Court convicted the applicant under Article 448 of the Criminal Code of homicide and sentenced him to fifteen years' imprisonment. The court found no convincing evidence that the offence committed by the applicant was linked to terrorist activities. The court ordered the applicant's release from prison in view of the length of his detention during judicial proceedings.

19. On 4 July 2002 the Court of Cassation quashed the judgment of 26 March 2002 because the applicant had been unable to examine three witnesses against him during the trial. The case was subsequently remitted to the First Division of the Diyarbakır State Security Court.

20. On 12 August 2002 the first-instance court requested the Istanbul State Security Court to obtain submissions from the applicant on the statements of the witnesses. Between 12 August 2002 and 14 July 2003, the State Security Court held six more hearings whilst awaiting the applicant's submissions.

21. On 14 July 2003 the first-instance court convicted the applicant once more of homicide and sentenced him to fifteen years' imprisonment.

22. On 8 April 2004 the Court of Cassation upheld this judgment.

II. RELEVANT DOMESTIC LAW

23. Article 104 of the Code of Criminal Procedure in force at the material time provided that a person could be remanded in custody where

there was a fear that the accused would abscond, or where there were attempts by the accused to remove evidence or interfere with witnesses. When the offence was a felony, it was presumed that the suspect was planning to escape. The last paragraph of Article 104 provided that detention on remand could not be imposed if another measure was adequate.

Articles 117-122 of the Code of Criminal Procedure in force at the material time set out the conditions for release on bail.

THE LAW

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

24. The applicant complained that his detention during judicial proceedings had exceeded the “reasonable time” requirement of Article 5 § 3 of the Convention.

A. Admissibility

25. 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, ECHR 2 May 2006), the Government maintained that the applicant had failed to object to his continued detention pursuant to Article 298 of the former Code of Criminal Procedure.

26. The applicant stated that he had not availed himself of this remedy since he considered it to be ineffective.

27. 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; *Tamamboğa and Gül v. Turkey*, no. 1636/02, §§ 27-29, 29 November 2007). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence.

28. Consequently, the Court rejects the Government’s objection.

29. 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

30. The Government maintained that the length of the applicant's remand in custody had been reasonable and had been in compliance with 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 his continued detention pending trial.

31. The applicant maintained his allegations and contested the Government's arguments.

32. The Court observes that in the instant case the applicant's detention on remand began on 12 April 1996 when he was taken into police custody and ended on 26 March 2002 upon his release by an order of the Diyarbakır State Security Court. It thus lasted approximately six years.

33. 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; *Mehmet Yavuz v. Turkey*, no. 47043/99, 24 July 2007; *Tamamboğa and Gül*, cited above).

34. 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 finds that in the instant case the length of the applicant's detention on remand was excessive.

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

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

36. The applicant maintained that the length of the criminal proceedings against him had exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention.

A. Admissibility

37. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

38. The Court notes that the period to be taken into consideration began on 12 April 1996, when the applicant was arrested, and ended on 8 April

2004, when the Court of Cassation rendered its final decision in the case. The period under consideration thus lasted approximately eight years.

39. The Government maintained that the length of the proceedings in the instant case could not be considered unreasonable in view of the number of accused persons, the complexity of the case and the nature of the offence with which the applicant was charged. The Government submitted in particular that the national court had to postpone the hearings in order to await the outcome of the investigation into the homicide with which the applicant was charged, and that there were no periods of inactivity attributable to the national courts.

40. The applicant maintained his allegations.

41. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case as well as the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

42. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, in particular, *Sertkaya v. Turkey*, no. 77113/01, §§ 19-21, 22 June 2006; *Volkan Şahin v. Turkey*, no. 34400/02, §§ 14-28, 20 May 2008).

43. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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 finds that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

44. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (a) OF THE CONVENTION

45. The applicant further complained that he was not informed of the accusations against him at the time of his arrest on 12 April 1996. He relied on Article 6 § 3 (a) of the Convention.

46. The Court considers that this complaint should be examined from the standpoint of Article 5 § 2 of the Convention.

47. The Government contended that the applicant had failed to exhaust the domestic remedies available to him, within the meaning of Article 35 § 1 of the Convention. In this connection, they argued that the applicant did not raise this complaint at any stage of the proceedings before the national authorities. The Government further submitted that the applicant had been

informed about the charges against him when he was arrested. A house search report had been drafted upon his arrest, which laid down the accusations against the applicant and bore the latter's signature. Furthermore, during his detention in police custody, he had been questioned about his affiliation to the PKK and the homicide, and he was once again notified of the charges against him before the Diyarbakır State Security Court on 25 April 1996.

48. The applicant maintained his allegations.

49. The Court is of the view that it is not necessary to determine whether, as the Government have suggested, the applicant has failed to exhaust domestic remedies, as it considers that this complaint is inadmissible for being outside the six-month time-limit.

50. The Court reiterates that pursuant to Article 35 § 1 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. In the absence of domestic remedies, the six-month period runs from the date of the act complained of (see, among other examples, *Gül and Others v. Turkey* (dec.), no. 4870/02, 11 December 2007).

51. In the instant case, the Court observes that the applicant was taken into police custody on 12 April 1996. On 22 April 1996 he was questioned by officers from the Diyarbakır provincial gendarmerie command and he was requested to provide information regarding his affiliation to the PKK and his involvement in the killing of B.C. The applicant, however, introduced his application with the Court on 25 September 2002, that is more than six months later.

52. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 13,140 euros (EUR) in respect of pecuniary damage for the loss of earnings incurred as a result of his detention on remand for an excessive length of time. He further claimed EUR 20,000 in respect of non-pecuniary damage.

55. The Government submitted in reply that the amount claimed in respect of non-pecuniary damage was excessive. As regards the applicant's submissions concerning pecuniary damage, the Government maintained that the applicant's claim was unsubstantiated.

56. On the question of pecuniary damage, the Court observes that the applicant has not produced any document in support of his claim. It accordingly dismisses it.

57. However, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 6,200.

B. Costs and expenses

58. The applicant also claimed EUR 5,350 for the costs and expenses incurred before the Court. This included legal work and the administrative costs incurred by his representative, such as telephone calls, postage and stationery costs.

59. The Government contested this claim.

60. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses as the applicant has not produced any documents in support.

C. Default interest

61. 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 complaints concerning the applicant's right to be released pending trial and to a fair hearing within a reasonable time admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Articles 5 § 3 of the Convention on account of the length of the applicant's detention on remand;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicant;
4. *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 6,200 (six thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President