



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

SECOND SECTION

CASE OF AKPOLAT v. TURKEY

(Application no. 35561/06)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Akpolat 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 Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 35561/06) 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 Akpolat (“the applicant”), on 11 July 2001.

2. The applicant was represented by Mr Murat Vargün and Ms Derya Bayır, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged that he had not been released pending trial and that the criminal proceedings against him had not been concluded within a reasonable time.

4. On 22 January 2008 the President of the Second Section decided to give notice of the application to the Government. It was 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

5. The applicant was born in 1975 and is currently serving a life sentence in a prison in Turkey.

6. On 18 July 1995 the applicant was arrested in Istanbul on suspicion of killing a person on behalf of the PKK¹. The same day he was placed in police custody, where two statements were taken from him by police officers.

7. On 31 July 1995 he was brought before a prosecutor and a judge, who questioned him further. The judge remanded the applicant in custody pending the introduction of criminal proceedings against him.

8. On 2 August 1995 the prosecutor at the Istanbul State Security Court filed an indictment with that court, accusing the applicant and five other persons of carrying out activities for the purpose of bringing about the secession of part of the national territory. He sought the death penalty under Article 125 of the Criminal Code.

9. Criminal proceedings began before the Istanbul State Security Court (“the trial court”) on 30 October 1995.

10. During the 31st hearing held on 28 February 2001, the applicant’s lawyer requested the trial court to release the applicant on bail. In the request the lawyer also referred to a number of judgments adopted by the European Court of Human Rights in cases concerning Article 5 of the Convention. The request for release was refused by the trial court. The objection lodged against the refusal was also rejected on 9 May 2001.

11. On 17 April 2002 the applicant was found guilty as charged and sentenced to death. The death sentence was commuted to life imprisonment on 24 September 2002. An appeal lodged by the applicant against his conviction was dismissed by the Court of Cassation on 10 June 2003.

THE LAW

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

12. The applicant complained that the length of his detention on remand had been excessive. He also complained about the lack of an effective procedure by which he could have challenged the lawfulness of his detention. In respect of these complaints he invoked Articles 5 § 3 and 5 § 4 of the Convention which 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.

¹ The Kurdistan Workers’ Party, an illegal organisation.

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”.

13. The Government contested those arguments.

A. Admissibility

14. 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

15. 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.

16. As for the complaint under Article 5 § 4 of the Convention the Government submitted that the applicant did in fact have a remedy at his disposal, under Article 298 of the Code of Criminal Procedure, to challenge the lawfulness of his detention on remand.

17. The applicant maintained his allegations.

1. Article 5 § 3 of the Convention

18. The Court observes that the applicant’s detention on remand began on 18 July 1995 when he was taken into police custody. It ended on 17 April 2002 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, § 9). He was thus detained on remand for a period of six years and nine months.

19. 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, *Habip Çiftçi v. Turkey*, no. 28485/03, §§ 29-33, 23 September 2008).

20. 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.

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

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

2. Article 5 § 4 of the Convention

23. The Court has already found that the existing remedy by which the lawfulness of the applicant's detention could have been challenged offered little prospect of success in practice and that it did not provide a procedure which was genuinely adversarial for the accused (see *Habip Çiftçi*, cited above, § 34 and the cases cited therein). The Court finds no particular circumstances in the instant case which would require it to depart from its previous findings.

24. 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

25. 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 ...”

26. The Government rejected that claim and argued that the proceedings were complex. In the Government's opinion, the trial court displayed diligence in conducting the case.

27. The Court observes that the criminal proceedings against the applicant began on 18 July 1995 when he was arrested and were concluded when the Court of Cassation upheld his conviction on 10 June 2003. They have thus continued for almost eight years before two levels of jurisdiction.

A. Admissibility

28. 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

29. 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).

30. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

31. 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.

There has accordingly been a breach of Article 6 § 1.

III. 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 14,994 euros (EUR) in respect of pecuniary and EUR 20,000 for non-pecuniary damage.

34. The Government argued that the sums claimed were excessive and unsupported by evidence.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant also claimed EUR 6,684 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In support of his claims the applicant submitted a schedule of hours spent by his lawyers on the case.

37. The Government contested the 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 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

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* 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 the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 7,000 (seven 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 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President