



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

SECOND SECTION

CASE OF MEHMET ALİ ÇELİK v. TURKEY

(Application no. 42296/07)

JUDGMENT

STRASBOURG

27 January 2009

FINAL

27/04/2009

This judgment may be subject to editorial revision.

In the case of Mehmet Ali Çelik 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 42296/07) 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 Ali Çelik (“the applicant”), on 13 September 2007.

2. The applicant was represented by Mr M. Özbekli, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 21 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1972 and is remanded in custody in Diyarbakır prison.

5. On 12 October 1998 the applicant was taken into police custody on suspicion of membership of Hizbullah, an illegal organisation.

6. On 19 October 1998 a single judge at the Batman Magistrates’ Court remanded him in custody.

7. On 11 November 1998 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment against the applicant and three other persons. The applicant was charged with attempting to undermine the constitutional order, an offence proscribed by Article 146 § 1 of the former Criminal Code. According to the information in the case file, the proceedings against the applicant are still pending at first instance, which is now the Diyarbakır Assize Court, and the applicant remains in detention on remand.

8. During the proceedings, the first-instance courts have examined the applicant's continued detention at the end of every hearing, either on their own motion or at the applicant's request. The courts ordered the applicant's continued detention, having regard to the nature of the offence, the state of evidence and the content of the file on each occasion.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

9. The applicant complained under Article 6 § 1 of the Convention that the length of his detention during judicial proceedings was excessive. He further complained under Article 13 of the Convention that there was no remedy in domestic law by which he could challenge the lawfulness of his detention.

10. The Court considers that these complaints should be examined from the standpoint of Article 5 §§ 3 and 4 of the Convention alone.

11. The Government raised various objections to the admissibility of these matters. However, the Court has rejected similar objections in many previous cases (see, for example, *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; *Acunbay v. Turkey*, nos. 61442/00 and 61445/00, § 48, 31 May 2005).

12. The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. It therefore finds that these complaints are admissible.

13. As regards the applicant's complaint about the unreasonable length of pre-trial detention, the Court notes that the period to be taken into consideration began on 12 October 1998, when the applicant was taken into police custody, and, according to the information in the case file, it was still pending on the date of the adoption of the present judgment. It has thus lasted almost ten years and three months.

14. The Court has frequently found violations of Article 5 § 3 of the Convention in cases disclosing comparable lengthy periods of pre-trial detention (see, for example, *Çarkçı v. Turkey*, no. 7940/05, § 21, 26 June 2007; *Dereci v. Turkey*, no. 77845/01, § 21, 24 May 2005; *Taciroğlu v. Turkey*, no. 25324/02, § 24, 2 February 2006). 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 the length of the applicant's detention was excessive, in breach of Article 5 § 3 of the Convention.

15. As regards the applicant's complaint of an absence of an effective remedy under Article 5 § 4 of the Convention, again the Court refers to its constant case-law that the Turkish legal system did not offer a remedy which was genuinely adversarial or which could offer reasonable prospects of success (see *Koşti and Others*, cited above, § 22; *Bağrıyanık v. Turkey*, no. 43256/04, §§ 50 and 51, 5 June 2007; *Doğan Yalçın v. Turkey*, no. 15041/03, § 43, 19 February 2008). It finds no reason to depart from that conclusion in the present case. Consequently, the Court concludes that there has also been a violation of this provision.

II. ALLEGED VIOLATION OF ARTICLES 6 and 13 OF THE CONVENTION

16. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings brought against him had not been determined within a reasonable time, and that he had no domestic remedy, as required by Article 13 of the Convention, to challenge this fact. The Government contested these claims.

17. The Court finds the complaints admissible, no ground for declaring them inadmissible having been established.

18. The period to be taken into consideration is, to date, the same as the aforementioned remand term - ten years and three months- before one level of jurisdiction. (see paragraph 13 above).

19. 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, for example, *Sertkaya v. Turkey*, no. 77113/01, § 21, 22 June 2006; *Hasan Döner v. Turkey*, no. 53546/99, § 54, 20 November 2007; *Uysal and Osal v. Turkey*, no. 1206/03, § 33, 13 December 2007). It finds no reason to depart from such a conclusion in the present case. Consequently, there has been a breach of Article 6 § 1 of the Convention due to the excessive length of the criminal proceedings against the applicant.

20. Moreover, the Court has previously found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby applicants could have contested the length of the proceedings at issue (see *Bahçeyaka v. Turkey*, no. 74463/01, §§ 26-30, 13 July 2006; *Tendik and Others*, no. 23188/02, §§ 34-39, 22 December 2005). It finds no reason to hold otherwise in the present case.

21. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and left it to the Court to assess an award for costs.

23. The Government contested the applicant's claim.

24. The Court notes that it has found violations of Article 5 §§ 3 and 4 and Articles 6 § 1 and 13 of the Convention. The Court considers, on the one hand, that the finding of a violation in respect of Article 5 § 4 and 13 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. On the other hand, the Court accepts that non-pecuniary damage suffered on account of the violations of Articles 5 § 3 and 6 § 1 of the Convention cannot be compensated solely by the findings of violations. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,500 under this head, with default interest being based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

25. In the absence of substantiation, no award is required for the applicant's costs.

26. Furthermore, according to the information submitted by the parties, the criminal proceedings against the applicant are still pending and the applicant is still detained. In these circumstances, the Court considers that an appropriate means for putting an end to the violations found would be to conclude the criminal proceedings against the applicant as speedily as possible, while taking into account the requirements of the proper administration of justice, and/or to release the applicant pending the outcome of these proceedings (see *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007; *Batmaz v. Turkey* (dec.), no. 34497/06, 1 April 2008).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 §§ 3 and 4 of the Convention;
3. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention;
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 12,500 (twelve thousand five 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 27 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President