



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

SECOND SECTION

CASE OF BARIŞ v. TURKEY

(Application no. 26170/03)

JUDGMENT

STRASBOURG

31 March 2009

FINAL

30/06/2009

This judgment may be subject to editorial revision.

In the case of Barış 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 10 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 26170/03) 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, Mrs İlkay Barış (“the applicant”), on 18 June 2003.

2. The applicant was represented by Mr H. Sağlam, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 September 2007 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 1967 and lives in Istanbul.

5. On 13 July 1992 the applicant was taken into police custody on suspicion of membership of the Revolutionary Left (the “DEV-SOL”), an illegal organisation.

6. On 28 July 1992 she was brought before a single judge at the Istanbul State Security Court who ordered her detention on remand.

7. On 18 September and 14 October 1992 and 26 May 1995, the public prosecutor at the Istanbul State Security Court filed three bills of indictment, charging the applicant with attempting to undermine the constitutional order, proscribed by Article 146 of the former Criminal Code.

8. The case against the applicant was joined to another brought against five other persons. On 28 September 1992 the first hearing before the Istanbul State Security Court was taken up with procedural matters.

9. By 24 December 2002 the applicant had made several requests for release pending trial to the Istanbul State Security Court. The court dismissed her requests on each occasion, having regard to the nature of the offence, the state of evidence and the content of the case file.

10. On 24 December 2002 the Istanbul State Security Court convicted the applicant as charged and sentenced her to death, subsequently commuted to life imprisonment. The State Security Court further ordered the applicant's release from prison, having regard to the total amount of time that she had been in detention.

11. On 28 April 2003 the Court of Cassation quashed the judgment of 24 December 2002.

12. On 15 November 2006 the Istanbul Assize Court convicted the applicant under Article 146 of the former Criminal Code and sentenced her to life imprisonment.

13. On 16 April 2007 the Court of Cassation upheld the judgment of the assize court.

II. RELEVANT DOMESTIC LAW

14. Section 1 (d) of Article 141 of the new Law of Criminal Procedure (Law no. 5271), which was adopted on 4 December 2004 and entered into force on 1 June 2005, provides:

“Persons who; ...

d) have been lawfully detained but not brought before the legal authorities within a reasonable time and who have not been tried within such time,...

during criminal investigation or prosecution may demand all pecuniary and non-pecuniary damages they sustained from the State.”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

15. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies, under Article 35 § 1 of the Convention. In this regard, they submitted that the applicant could have sought compensation pursuant to Articles 141 § 1(d) of Law no. 5271.

16. The applicant contested the availability and effectiveness of this remedy.

17. The Court reiterates that it has examined and rejected similar arguments previously within the context of Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained (see *Bayam v. Turkey*, no. 26896/02, § 16, 31 July 2007, and *Yağcı and Sargın v. Turkey*, 8 June 1995, § 44, Series A no. 319-A). The Court notes that although the scope of Law no. 5271 is wider than that of Law no. 466, in that the latter only entails an action for damages against the State in respect of detention undergone by persons who had been unlawfully detained or acquitted, the underlying idea remains the same, which is to provide a remedy against shortcomings in relation to the detention procedure by way of compensation. However, the Court has clearly established in the past that the right to be tried within a reasonable time or released during the proceedings is not the same as the right to receive compensation for detention; Article 5 § 3 of the Convention covers the former and Article 5 § 5 the latter (see *Yağcı and Sargın*, cited above, § 44). In other words, a claim for compensation as indicated by the Government would not make it possible to end detention of excessive length within the meaning of Article 5 § 3 of the Convention (see *Tepe v. Turkey* (dec.), no. 31247/96, 22 January 2002, and *Sincar and Others v. Turkey* (dec.), no. 46281/99, 24 March 2005) and therefore may not be considered an effective remedy in these circumstances.

18. In the light of the foregoing, the Court concludes that this objection cannot be upheld.

19. The Court notes that this application 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.

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

20. The applicant complained that her detention during the aforementioned judicial proceedings had exceeded the “reasonable time” requirement of Article 5 § 3 of the Convention, which provides 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.”

21. The Government maintained that the length of the applicant’s remand in custody had been reasonable. In particular, they submitted that the seriousness of the crime, the risk of escape or the committal of a further crime, together with the special circumstances of the case, had justified her continued detention pending trial.

22. The applicant maintained her allegations and contested the Government’s arguments.

23. The Court observes that in the instant case the applicant’s detention began on 13 July 1992 when she was taken into police custody and ended on 24 December 2002 upon her release by an order of the Istanbul State Security Court. It thus lasted over ten years and five months.

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, §§ 34-41, 24 May 2005; *Atıcı v. Turkey (no. 1)*, no. 19735/02, §§ 48-51, 10 May 2007; and *Çarkçı v. Turkey*, no. 7940/05, §§ 18-21, 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. Having regard to its case-law on the subject, the Court finds that the length of the applicant’s detention during judicial proceedings was excessive and contravened Article 5 § 3 of the Convention.

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

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

27. The applicant complained of the length of the criminal proceedings brought against her. She relied on Article 6 § 1, which provides as follows:

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

28. The Government maintained that, in the circumstances of the present case, the criminal proceedings could not be considered to have been unreasonably long or to have been prolonged unnecessarily due to a fault attributable to the State. In this respect, they referred to the number of defendants, the complexity of the trial and the difficulties encountered in the collection of evidence and the notification process. The Government further submitted that the applicant had contributed to the prolongation of the proceedings by refraining from participating in a number of hearings.

29. The applicant maintained her allegations.

30. The Court observes that the period to be taken into consideration began on 13 July 1992, when the applicant was arrested and taken into police custody, and ended on 16 April 2007, when the Court of Cassation delivered its final decision. The period under consideration thus lasted over fourteen years and nine months before two levels of jurisdiction.

31. 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, 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).

32. 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, *Ege v. Turkey*, no. 47117/99, § 25, 29 March 2005; and *Gümüştan v. Turkey*, no. 47116/99, §§ 24-26, 30 November 2004).

33. 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 application. In particular, the Government have not sufficiently substantiated how the applicant could be considered to have made any significant contribution to the prolongation of the trial. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant, an environmental engineer, claimed 157,080 euros (EUR) in respect of pecuniary damage for the loss of earnings incurred as a result of her detention on remand for an excessive length of time. She relied on the Chamber of Environmental Engineers’ recommended scale of fees in support of her claim. She further claimed EUR 30,000 in respect of non-pecuniary damage.

37. The Government contested these claims as speculative and fictitious.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 6,175 in legal fees, calculated on the basis of the Istanbul Bar Association's minimum fees list, and EUR 181 as costs and expenses, such as stationery, translation and postal expenses. She submitted various invoices to substantiate her costs and expenses but provided no additional documentation, such as a fee agreement with her representative.

40. The Government contested these claims.

41. According to the Court's case-law, an applicant is entitled to 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, the Court notes that the applicant solely referred to the Istanbul Bar Association's rates in relation to her claim for legal fees and failed to submit any supporting documents. The Court therefore only awards EUR 120 in respect of her documented costs and expenses.

C. Default interest

42. 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 Articles 5 § 3 and 6 § 1 of the Convention;
3. *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 120 (one hundred and twenty 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;

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

Done in English, and notified in writing on 31 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President