



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

1959 · 50 · 2009

SECOND SECTION

CASE OF FIRAT v. TURKEY

(Application no. 37291/04)

JUDGMENT

STRASBOURG

30 June 2009

FINAL

30/09/2009

This judgment may be subject to editorial revision.

In the case of *Firat 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 9 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 37291/04) 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 Firat (“the applicant”), on 30 March 2004.

2. The applicant was represented by Ms N.B. Gümrükçüoğlu, a lawyer practising in Trabzon. The Turkish Government (“the Government”) were represented by their Agent.

3. On 7 May 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

4. The applicant was born in 1961 and lives in Istanbul.

5. On 5 September 2000 the applicant was arrested and taken into custody on suspicion of membership of an organised criminal gang and involvement in kidnapping on behalf of that organisation. On 8 September 2000 he was remanded in custody.

6. On 18 October 2000 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and twenty-one other persons on the above-mentioned charges.

7. On 6 November 2000 the criminal proceedings against the applicant and the twenty-one other accused commenced before the Istanbul State Security Court. Eighteen hearings were held in total. Throughout the proceedings the applicant's lawyer repeatedly requested that the applicant be released during trial, but those requests were dismissed at the end of each hearing by way of an interim decision using an identical expression, namely "having regard to the nature of the offence with which he is charged and the state of the evidence".

8. On a number of occasions the applicant's lawyer objected to the interim decisions of the Istanbul State Security Court extending the applicant's detention, and in each case the objections were further dismissed by the Istanbul State Security Court using the aforementioned identical expression.

9. On 11 March 2004 the Istanbul Assize Court convicted the applicant as charged and sentenced him, in total, to 27 years and 4 months' imprisonment.

10. On 20 April 2005 the Court of Cassation held a hearing and upheld the first-instance court's judgment in respect of the applicant's membership of an organised criminal gang, but quashed the judgment in respect of the sentence imposed on the applicant for kidnapping.

11. On 1 August 2005 the case was referred back to the Istanbul Assize Court.

12. On 10 November 2005 the Istanbul Assize Court decided to release the applicant pending trial. He was accordingly released the next day.

13. On 26 February 2008 the Istanbul Assize Court convicted the applicant as charged and sentenced him to imprisonment for, in total, twelve years, eight months and fifteen days.

14. The case is still pending before the Court of Cassation.

THE LAW

15. The applicant complained that his requests for release during the judicial proceedings had been dismissed on identical and stereotypical grounds, which did not constitute relevant and sufficient grounds justifying the continuing deprivation of liberty, in breach of Article 5 §§ 1 and 3 of the Convention.

16. The Court considers that this complaint should be examined from the standpoint of Article 5 § 3 of the Convention alone.

17. 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.

18. The Government contended that the domestic authorities had displayed diligence when considering the applicant's requests for release. Moreover, they claimed that the seriousness of the crime and the special circumstances of the case justified his continued detention on remand for about five years.

19. The applicant maintained his allegations.

20. The Court refers to 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; *Kudla 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*, 26 June 1991, § 43, Series A no. 207). It will examine the present case in the light of these principles.

21. The Court notes that the applicant's remand in custody consisted of two periods of pre-trial detention and lasted over four years and 21 days in total (see, in particular, *Solmaz v. Turkey*, no. 27561/02, §§ 23-36, 16 January 2007, as regards the calculation of periods of pre-trial detention). The Court further notes from the material in the case file that the State Security Court considered the applicant's detention at the end of every hearing. On each occasion it extended that detention using identical, stereotyped terms. The applicant's objections to these interim decisions were also dismissed in similar terms.

22. 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, *Getiren v. Turkey*, no. 10301/03, § 108, 22 July 2008; *Çetin Ağdaş v. Turkey*, no. 77331/01, § 28, 19 September 2006; and *Mehmet Yavuz v. Turkey*, no. 47043/99, § 39, 24 July 2007).

23. 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 connection, the Court observes that the domestic courts failed to indicate to what extent the applicant's release would have posed a risk after the passage of time, in particular in the later stages of the proceedings (see *Demirel v. Turkey*, no. 39324/98, § 60, 28 January 2003). Furthermore, the first-instance court never considered a different preventive measure, such as a prohibition on leaving the country or release on bail, instead of maintaining the applicant's detention (see *Mehmet Yavuz*, cited above, § 40).

24. The foregoing considerations are sufficient to enable the Court to conclude that the length of the applicant's detention, which lasted over four years and 21 days, given the stereotypical reasoning of the first-instance court, has not been shown to have been justified (see *Çetin Ağdaş*, cited above, § 33).

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

26. As regards just satisfaction under Article 41 of the Convention, the applicant first claimed 144,491 euros (EUR) in respect of pecuniary damage. This sum corresponded to the loss of earnings due to his early retirement from the army as a result of the criminal proceedings against him. He further claimed EUR 125,000 in respect of non-pecuniary damage. The applicant, without specifying an amount, further requested the reimbursement of the costs and expenses incurred by his legal representative both before the domestic courts and before the Court. He referred to the Trabzon Bar Association's scale of fees. The Government contested the claims.

27. As regards damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

28. As to costs and expenses, in the absence of any particulars or supporting documents submitted within the specified time-limit, the Court finds the applicant's claim under this head unsubstantiated and accordingly dismisses it.

29. 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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is to be converted into Turkish liras 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 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 30 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Cabral Barreto is annexed to this judgment.

S.D.
F.T.

CONCURRING OPINION OF JUDGE CABRAL BARRETO

In my opinion, once the applicant had been convicted and sentenced by the Assize Court to various terms of imprisonment for several offences, including that of three years and four months for membership of an illegal organisation, which decision was upheld on cassation, the only period to be taken into account for the violation of Article 5 § 3 of the Convention ran from his arrest until his conviction at first instance - a period of three and a half years.