



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

1959 · 50 · 2009

SECOND SECTION

CASE OF MÜCEK v. TURKEY

(Application no. 7605/05)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Mücek 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,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 7605/05) 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 Ahmet Akif Mücek (“the applicant”), on 4 February 2005.

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

3. On 27 March 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

4. The applicant was born in 1960 and lives in Kandıra.

5. On 26 November 1995 the applicant was taken into custody by police officers from the Anti-Terrorist Branch of the Istanbul Security Directorate on suspicion of membership of an illegal organisation, namely the *Dev-Yol* (Revolutionary Way). On 8 December 1995 he was brought before the investigating judge at the Istanbul State Security Court, who ordered him to be detained pending trial. On 9 May 1996 the public prosecutor at the Istanbul State Security Court filed an indictment against the applicant and twelve other accused. Invoking Article 146 of the Criminal Code, he accused the applicant of membership of an illegal armed organisation and of

involvement in activities which undermined the constitutional order of the State.

6. The trial commenced before the Istanbul State Security Court. In the subsequent hearings the court refused to release the applicant on account of the nature of the alleged offence and the state of the evidence. On 7 May 2004 the State Security Courts were abolished following a constitutional amendment, and the applicant's case was transferred to the Istanbul Assize Court. On 30 November 2006 the applicant was released pending trial.

THE LAW

7. Relying on Article 5 § 3 of the Convention, the applicant complained about his pre-trial detention.

8. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies under Article 35 § 1. Referring to the Court's decision in the case of *Köse v. Turkey* ((dec.), no. 50177/99, 2 May 2006), the Government maintained that the applicant had failed to object to his continued detention under Articles 292-304 of the former Code of Criminal Procedure. The Court reiterates that it has already examined and rejected the Government's preliminary objections in cases similar to the present application (see *Koşti and Others v. Turkey*, no. 74321/01, §§ 18-24, 3 May 2007). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Consequently, it rejects the Government's preliminary objection.

9. The Court notes that the 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.

10. As regards the merits of the complaint raised under Article 5 § 3 of the Convention, the Court observes that the applicant's pre-trial detention began on 26 November 1995 with his arrest and ended on 30 November 2006, when he was released pending trial. Thus, the period to be taken into consideration is eleven years, during which the domestic courts constantly extended the applicant's detention using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of the evidence". 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, *Atıcı v. Turkey*, no. 19735/02, 10 May 2007; *Solmaz v. Turkey*, no. 27561/02, ECHR 2007-...; *Dereci v. Turkey*, no. 77845/01, 24 May 2005, and *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006). 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. In the light of the foregoing, the Court finds that the length of the applicant's pre-trial detention contravened Article 5 § 3 of the Convention. There has accordingly been a violation of this provision.

11. Concerning just satisfaction, the applicant claimed 436,000 Turkish liras (TRY) (approximately 203,000 euros (EUR)) in respect of pecuniary damage and TRY 1,000,000 (approximately EUR 467,000) in respect of non-pecuniary damage. The applicant further requested a total of TRY 81,000 (approximately EUR 37,000) for the costs and expenses incurred in domestic proceedings and EUR 10,000 for those before the Court. The Government contested these claims.

12. The Court does not discern any causal link between the violation found and pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have suffered certain non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Therefore, ruling on an equitable basis, it awards the applicant EUR 9,000. Regarding the applicant's claims for costs and expenses, in accordance with its case-law and regard being had to the documents its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

13. The Court further finds 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

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, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one 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;

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

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President