



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ETEM KARAGÖZ v. TURKEY

(Application no. 32008/05)

JUDGMENT

STRASBOURG

15 September 2009

FINAL

15/12/2009

This judgment may be subject to editorial revision.

In the case of Etem Karagöz 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 25 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 32008/05) 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 Etem Karagöz (“the applicant”), on 18 August 2005.

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

3. On 27 June 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 1973 and lives in Diyarbakır.

5. On 19 January 1994 the applicant was arrested and taken into police custody by officers of the Diyarbakır security police in connection with an investigation into an illegal organisation.

6. On 7 February 1994 the applicant was brought before the Diyarbakır public prosecutor and then the investigating judge, who remanded the applicant in custody.

7. By an indictment dated 17 March 1994, the public prosecutor at the Diyarbakır State Security Court initiated criminal proceedings against the applicant and a number of others, accusing him, *inter alia*, of carrying out

activities for the purpose of bringing about the secession of part of the national territory under Article 125 of the Criminal Code.

8. On 30 July 1997 the Diyarbakır State Security Court convicted and sentenced the applicant to life imprisonment, pursuant to Article 125 of the Criminal Code.

9. The applicant appealed. On 1 March 1999 the Court of Cassation quashed the judgment of the first-instance court on procedural grounds and remitted the case to the Diyarbakır State Security Court. Following constitutional amendments introduced on 7 May 2004, the State Security Courts were totally abolished. Subsequently, the applicant's case was resumed before the 6th Assize Court of Diyarbakır.

10. Throughout the whole proceedings the applicant regularly requested his release whereas the trial courts rejected his requests. On 20 October 2005 the applicant noted that he had already been detained for a period of more than eleven years and reiterated his request. Relying on the accusations against the applicant, the existence of strong evidence against him and the content of the case file, the 6th Assize Court of Diyarbakır refused his request again. The applicant appealed. On 25 October 2005 the 4th Assize Court of Diyarbakır dismissed the appeal without further reasoning.

11. On 9 March 2007 the 6th Assize Court of Diyarbakır convicted the applicant and sentenced him to life imprisonment. On 7 March 2008 the Court of Cassation upheld the judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 3 and 4 OF THE CONVENTION

12. The applicant complained under Article 5 § 3 of the Convention that the length of his detention on remand had been excessive. He further contended under Article 5 § 4 of the Convention that there were no remedies in domestic law to challenge the length of his detention on remand.

13. The Court observes that the applicant's detention, for the purposes of Article 5 § 3 of the Convention, began when he was taken into police custody on 19 January 1994 and continued until he was convicted by the trial court on 30 July 1997. From 30 July 1997 until his conviction was quashed by the Court of Cassation on 1 March 1999, he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5

§ 3 (see *Cahit Solmaz v. Turkey*, no. 34623/03, § 34, 14 June 2007 and the cases cited therein). From 1 March 1999 until his conviction by the trial court again on 9 March 2007, however, the applicant was once more in pre-trial detention for the purposes of Article 5 § 3 of the Convention. It follows that the applicant spent a total of over eleven years and six months as a remand prisoner.

A. Article 5 § 3 of the Convention

14. The Government argued that there had been a genuine requirement of public interest for the continued detention of the applicant, who had been charged with a serious offence. There had also been a high risk of him escaping and committing further crimes.

15. 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.

16. The Court observes that the Diyarbakır State Security Court failed to indicate to what extent the applicant's release would have posed a risk, after – by then – well over eleven years of detention (including the periods of imprisonment after conviction), in its last decision to extend the applicant's detention pending his trial at first instance. Neither are there any documents in the file to suggest that the trial court, which ordered the applicant's continued detention on many occasions, at any time displayed concern about the length of the applicant's detention.

17. 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, *Tacıroğlu v. Turkey*, no. 25324/02, §§ 18-24, 2 February 2006; *Solmaz v. Turkey*, no. 27561/02, § 44, 16 January 2007; *Güveç v. Turkey*, no. 70337/01, § 108, 20 January 2009).

18. 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. Having regard to its case-law on the subject, it considers that in the instant case the length of the applicant's detention pending trial was excessive and contravened Article 5 § 3 of the Convention.

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

B. Article 5 § 4 of the Convention

20. The Government submitted that the applicant had challenged his detention period before the trial court, which indicated that an effective remedy had been available. Alternatively, if the applicant had believed that the domestic remedies were ineffective, then he should have lodged his application with the Court within six months of the detention order.

21. The Court has already examined the possibility of challenging the lawfulness of pre-trial detention in Turkey at the relevant time and concluded that it offered little prospect of success in practice as it did not provide for a procedure that was genuinely adversarial for the accused (see *Doğan Yalçın v. Turkey*, no. 15041/03, § 43, 19 February 2008). The Court finds no particular circumstances in the instant case which would require it to depart from its previous findings. Additionally the Court observes that the applicant challenged his detention, albeit unsuccessfully, on 20 October 2005, whereas the present application was introduced beforehand, on 18 August 2005. The Government's objection concerning compliance with the six-month rule under Article 35 § 1 of the Convention is not, therefore, pertinent.

22. 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

23. The applicant complained that the length of the criminal proceedings lodged against him had exceeded the reasonable time requirement of Article 6 § 1 of the Convention.

24. The Government contested that argument. They maintained that the case was complex and involved eight suspects who had been accused of several illegal actions. They contended that no negligence or delay could be imputed to the judicial authorities. In this connection they referred to the judgment in the case of *İntiba v. Turkey* (no. 42585/98, 24 May 2005) where the Court found a total period of ten years to be reasonable.

25. 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.

26. The Court observes that the proceedings began on 19 January 1994 with the applicant's arrest and ended on 7 March 2008 when the Court of Cassation delivered its judgment. They thus lasted over fourteen years for two levels of jurisdiction delivering four judgments.

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to that in the present application (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Ertürk v. Turkey*, no. 15259/02, 12 April 2005).

28. The Court notes that the circumstances in the case of *İntiba v. Turkey* (see above) referred to by the Government differ from the present application. In particular, that applicant had not been detained on remand; the length taken into consideration was seven years and eleven months; and approximately three years and three months of this period was attributable to the applicant.

29. Having examined all the material submitted to it and 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant submitted that, as a result of his arrest and detention, he had been unable to work and thus support his family. He claimed 50,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 for non-pecuniary damage.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 15,600 for non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed EUR 4,850 for costs and expenses incurred before the Court. In support of his claim the applicant submitted a schedule of costs, showing the hours spent by his lawyer on the case.

36. The Government considered the sums to be excessive and unsupported by adequate documentation.

37. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 under this head.

C. Default interest

38. 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 and 4 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 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, the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 15,600 (fifteen thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
 - (ii) EUR 3,000 (three thousand euros), plus any tax 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;

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

Done in English, and notified in writing on 15 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President