



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ÜNAY v. TURKEY

(Application no. 24801/05)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Ünay 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 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 24801/05) 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 Selim Ünay (“the applicant”), on 17 June 2005.

2. The applicant was represented by Mr and Ms Kırdök, lawyers practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 September 2008 the President of the Second Section decided to give notice of the application. 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 1958 and lives in Kandıra.

5. On 9 July 1996 the applicant was arrested in Istanbul during a bank robbery. On 24 July 1996 he was brought before the investigating judge at the Istanbul State Security Court, who remanded him in custody.

6. On 5 August 1996 the public prosecutor at the Istanbul State Security Court filed an indictment against the applicant. 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.

7. 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.

8. On 11 December 1997 the Istanbul State Security Court pronounced its judgment. It convicted the applicant as charged and sentenced him to life imprisonment.

9. On 3 December 1998 the Court of Cassation quashed this judgment. The case was accordingly remitted to the Istanbul State Security Court.

10. On 5 January 1999 the Istanbul State Security Court resumed the trial. During the subsequent hearings, the court rejected the applicant's requests for release, having regard to the state of the evidence.

11. On 19 December 2002 the Istanbul State Security Court once again convicted the applicant as charged and, pursuant to Article 146 of the Criminal Code, sentenced him to life imprisonment.

12. On 16 September 2003 the Court of Cassation once again quashed the judgment of the first instance court.

13. The proceedings continued before the Istanbul State Security Court. 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.

14. According to the information in the case file, the proceedings are still pending and the applicant is still remanded in custody.

THE LAW

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

16. The Government asked the Court to dismiss the application under Article 35 § 1 for failure to exhaust domestic remedies. 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, *Koştı 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.

17. The Government further argued that the application should be rejected for non-compliance with the six months time-limit. In this respect, they maintained that he should have lodged his application to the Court sooner, had he considered that there were no effective domestic remedies.

The Court reiterates that, where no domestic remedy is available, the six months time-limit contained in Article 35 § 1 of the Convention in principle runs from the date of the act complained of in the application (*Ari and Şen v. Turkey*, no. 33746/02, §23, 2 October 2007). In the present case, the criminal proceedings against the applicant are still pending and he is still in detention on remand. Furthermore, as explained above, there are no effective remedies which the applicant can use to challenge his prolonged detention pending trial (see, *Koştı*, cited above, §§ 21-25). The Court therefore accepts that the application has been brought within the six months time-limit. As a result, it rejects the Government's second objection.

18. In view of the above, 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.

19. 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 9 July 1996 with his arrest. In line with its case-law (see, *Solmaz v. Turkey*, no. 27561/02, § 36, ECHR 2007-... (extracts), and *Akyol v. Turkey*, no. 23438/02, § 25, 20 September 2007), after deducting the periods when the applicant was detained after conviction under Article 5 § 1 (a) of the Convention¹ from the total time he has been deprived of his liberty, the period to be taken into consideration in the instant case is eleven years and four months, at the date of adoption of the present judgment. Over the years, 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".

20. 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*, cited above; *Dereci v. Turkey*, no. 77845/01, 24 May 2005; *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 contravenes Article 5 § 3 of the Convention. There has accordingly been a violation of this provision.

21. Concerning just satisfaction, the applicant claimed 20,000 Euros (EUR) in respect of non-pecuniary damage. The applicant further requested 5,500 Turkish liras (TRY) (approximately EUR 2,500) for the legal fees and TRY 260 (approximately EUR 120) for the costs and expenses incurred

¹ The period between 11 December 1997 and 3 December 1998 and that between 19 December 2002 and 16 September 2003.

before the Court. In this respect, the applicant submitted a legal fee agreement, but failed to submit any invoices regarding the expenses. The Government contested these claims.

22. 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 in respect of non-pecuniary damage. Regarding the applicant's claims for costs and expenses, in accordance with its case-law and regard being had to the documents in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

23. 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.

24. Finally, according to the information submitted by the parties, the criminal proceedings against the applicant are still pending and the applicant remains in custody. 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, and *Mehmet Ali Çelik v. Turkey*, no. 42296/07, § 26, 27 January 2009).

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 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President