



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

1959 · 50 · 2009

SECOND SECTION

CASE OF BAHÇELİ v. TURKEY

(Application no. 35257/04)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bahçeli 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 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 35257/04) 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 Murat Bahçeli (“the applicant”), on 31 August 2004. The applicant was represented by Mr K.T. Sürek, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

2. On 28 August 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the applicant's right to be released pending judicial proceedings and to a fair hearing within a reasonable time to the Government. It 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

3. The applicant was born in 1976 and lives in Istanbul.

4. On 20 August 1996 the applicant was arrested and taken into custody on suspicion of membership of an illegal organisation, namely the DHKP-C (*Devrimci Halk Kurtuluş Partisi-Cephesi*; the Revolutionary People's Liberation Party-Front), as well as aiding and abetting the said organisation.

5. On 3 September 1996 the applicant was remanded in custody.

6. On 6 December 1996 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant, along with other persons, charging him with membership of an illegal organisation under Article 168 § 1 of the former Criminal Code.

7. On 20 May 2002 the Istanbul State Security Court found the applicant guilty of activities carried out for the purpose of bringing about the secession of part of the national territory. The applicant was sentenced to death; his sentence was subsequently commuted to life imprisonment.

8. On 30 September 2003 the Court of Cassation quashed the judgment of the first-instance court on the ground that the latter had failed to specify the provision of the Criminal Code under which the applicant had been found guilty. The Court of Cassation held that the applicant had been unlawfully held accountable for an event which had not been included in the bill of indictment of 6 December 1996.

9. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. The case against the applicant was therefore transferred to the Istanbul Assize Court.

10. On 31 March 2006 the applicant was released pending trial.

11. According to the information in the case file, the case is still pending before the Istanbul Assize Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 5 § 3 AND 6 § 1 OF THE CONVENTION

12. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention had been excessive. He further alleged under Article 6 § 1 of the Convention that the criminal proceedings against him had not been concluded within a reasonable time.

13. The Court notes that the applicant's pre-trial detention began on 20 August 1996 when he was taken into police custody and continued until he was convicted by the trial court on 20 May 2002. From that point on until the Court of Cassation quashed his conviction on 30 September 2003, he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) of the Convention (see *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, ECHR 2007-II). From 30 September 2003 until his release on 31 March 2006, 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 eight years and three months in this form of custody.

14. As for the length of the proceedings, the Court observes that the relevant proceedings commenced on 20 August 1996 with the applicant's arrest and, according to the information in the case-file as submitted by the parties to date, are still pending before the Istanbul Assize Court. They have thus already lasted over thirteen years and one month for two levels of jurisdiction.

A. Admissibility

15. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies, under Article 35 § 1 of the Convention. 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, pursuant to Articles 298 of the former Code of Criminal Procedure. They also argued, in the alternative, that domestic remedies had not been exhausted as the criminal proceedings were still pending before the Istanbul Assize Court.

16. The Government further submitted that the applicant could not claim to be a victim of a violation of Article 5 § 3 of the Convention because the time spent by him on remand would eventually be deducted from the total sentence imposed on him.

17. Lastly, the Government argued that the applicant had failed to comply with the six-month rule laid down in Article 35 § 1 of the Convention. In their view, the applicant should have brought his application to the Court sooner, had he considered that there were no effective remedies under domestic law in respect of his Convention grievances.

18. As regards the Government's non-exhaustion objection, the Court notes that it has already examined and rejected both aspects of this contention in previous cases (see, in particular, *Koşti and Others v. Turkey*, no. 74321/01, §§ 19-24, 3 May 2007; *Mehmet Şah Çelik v. Turkey*, no. 48545/99, §§ 22-31, 24 July 2007; *Tamamboğa and Gül v. Turkey*, no. 1636/02, §§ 27-29, 29 November 2007; *Ertürk v. Turkey*, no. 15259/02, §§ 21-22, 12 April 2005; *Tutar v. Turkey*, no. 11798/03, §§ 12-14, 10 October 2006). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. It therefore rejects the Government's objection under this head.

19. As regards the applicant's victim status, the Court notes that it has already examined similar submissions made by the respondent Government in other cases (see, for example, *Ari and Şen v. Turkey*, no. 33746/02, § 19, 2 October 2007 and the cases cited therein). In the present case the Government have not submitted any arguments which could lead the Court to reach a different conclusion. Accordingly, the Government's objection to the applicant's victim status must be rejected.

20. As for the applicant's compliance with the six-month time-limit, the Court reiterates that, according to its established case-law, where no domestic remedy is available the six-month period runs from the date of the act alleged to constitute a violation of the Convention. However, where there is a continuing situation, the period of six months only begins to run from the end of the situation concerned (*İpek and Others v. Turkey*, nos. 17019/02 and 30070/02, § 24, 3 February 2009). In the instant case, the applicant was released from pre-trial detention only on 31 March 2006, whereas he lodged his application with the Court on 31 August 2004, when his detention was still continuing. Consequently, and bearing in mind that the criminal proceedings are still pending before the Istanbul Assize Court, the Court finds that the application was lodged well within time.

21. The Court considers 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.

B. Merits

22. As regards the complaint under Article 5 § 3 of the Convention the Government submitted that the applicant's detention had been based on the existence of reasonable grounds of suspicion of his having committed an offence, and that the custodial measure had been reviewed periodically by the competent authority. They further pointed out that there had been a genuine requirement of public interest for the applicant's continued detention in view of the serious nature of the offence with which he had been charged. They maintained that his detention had also been necessary to prevent him from committing a further offence, absconding and removing evidence.

23. The Government contended in relation to the complaint under Article 6 § 1 of the Convention that, in the circumstances of the present case, the criminal proceedings could not be considered to have been unreasonably long. In this respect, they submitted that the case was complex, considering the charges against the applicant and the number of defendants involved, and that no negligence or delay could be imputed to the judicial authorities. They further alleged that the applicant had contributed to the length of the proceedings by not appearing at a number of hearings and that his lawyer had been inactive in defending him.

24. The Court has frequently found violations of Articles 5 § 3 and 6 § 1 of the Convention in cases raising similar issues to those in the present application (see, for example, *Yaşar v. Turkey*, no. 46412/99, §§ 56-65, 24 January 2006; *Atıcı v. Turkey (no. 1)*, no. 19735/02, §§ 48-51, 10 May 2007; *Solmaz*, cited above, §§ 34-51; *Arı and Şen*, cited above, §§ 27-30;

Getiren v. Turkey, no. 10301/03, §§ 104-109, 22 July 2008; *Cahit Demirel v. Turkey*, no. 18623/03, §§ 21-28 and §§ 35-42, 7 July 2009¹).

25. 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. Having regard to its case-law on the subject, it considers that the length of the applicant's pre-trial detention and of the criminal proceedings against him was excessive and contravened Articles 5 § 3 and 6 § 1 of the Convention. The Court notes particularly in this regard that even if the delay in the criminal proceedings may be considered to have been partly attributable to the applicant as alleged by the Government, the overall length of the proceedings was still excessive and failed to meet the "reasonable-time" requirement.

26. There has accordingly been a violation of these provisions.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Articles 5 § 3 and 6 § 1 of the Convention.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

1. Judgment not final yet.