



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

1959 · 50 · 2009

SECOND SECTION

CASE OF GEÇGEL and ÇELİK v. TURKEY

(Applications nos. 8747/02 and 34509/03)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Geçgel and Çelik v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 8747/02 and 34509/03) 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 two Turkish nationals, Mr Halis Geçgel and Mr Recep Çelik (“the applicants”), on 27 November 2001 and 22 July 2003 respectively.

2. The applicants were represented by Mr M Beştaş, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 8 June 2006 and 2 October 2007, respectively, the Court declared the applications partly inadmissible and decided to communicate to the Government the complaints concerning a lack of legal assistance to the applicants during their police custody and the length of the criminal proceedings. Furthermore, in respect of application no. 8747/02, the Court communicated the complaint as regards the length of the first applicant's detention on remand and, in respect of application no. 34509/03, the second applicant's complaint raised under Article 6 § 3 (d). It also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

4. The applicants were born in 1977 and 1965, respectively, and they are both serving prison sentences. The facts common to these cases are that the applicants were arrested and placed in custody on suspicion of membership

of an illegal organisation, and during their police custody they had no right to legal assistance. Their statements taken during this period were subsequently used for their conviction by the trial courts.

5. The details concerning the applications are indicated in the table below.

Application no. and case name	Date of police custody	Date of interrogation by the police	Date of interrogation by the public prosecutor and the investigating judge	Date of first instance court judgment and Court of Cassation decision
8747/02 Geçgel v. Turkey	26.10.1996	12.11.1996	15.11.1996	24.10.2002 and 11.03.2003
34509/03 Çelik v. Turkey	29.10.1996	13.11.1996	15.11.1996	24.10.2002 and 11.03.2003

6. In the case of Mr Geçgel (no. 8747/02), the domestic courts constantly extended his detention using identical, stereotyped terms, such as “having regard to the nature of the offence and the state of the evidence”.

THE LAW

7. In view of the similarity of the applications, the Court finds it appropriate to join them.

8. Relying on Article 5 § 3 of the Convention, the first applicant complained that the length of his detention on remand had exceeded the reasonable time requirement. Under Article 6 § 1 of the Convention, both applicants alleged that the length of the criminal proceedings against them had been excessive. They further complained under Article 6 § 3 (c) of the Convention that they had been denied the assistance of a lawyer during their police custody, and that their statements which had been taken during this period had been used for their conviction. Finally, the second applicant maintained under Article 6 § 3 (d) of the Convention that the main prosecution witness had not been heard by the trial court.

9. As regards application no. 8747/02, the Government stated that as the proceedings were still pending before the domestic court when the application had been introduced and, as the applicant never raised his complaint concerning the length of the criminal proceedings before the domestic courts, the application should be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention. The Court reiterates that it has already examined and rejected this preliminary objection by the Government's in cases similar to the present

application (see, *E.K. v. Turkey* (dec.), no. 28496/95, 28 November 2000 as regards the first objection, and *Mahmut Aslan v. Turkey*, no. 74507/01, § 15, 2 October 2007 as regards the second). It finds no particular circumstances which would require it to depart from this jurisprudence. Consequently, it rejects the Government's preliminary objections.

10. As regards application no. 34509/03, the Government maintained that the applicant's complaint raised under Article 6 § 3 (c) was introduced outside the six month time-limit, prescribed by Article 35 § 1 of the Convention, since the applicant's police custody had ended on 15 November 1996. The Court recalls that, in assessing whether or not a trial was fair, regard should be had to the entirety of the proceedings (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports of Judgments and Decisions* 1996-I). In the present case, the applicant lodged his application with the Court within six months of the delivery of the final decision in the case given by the Court of Cassation. He therefore lodged his application to the Court within the six month time-limit of Article 35 § 1. Consequently, the Government's objection cannot be upheld.

11. The Court notes that the remaining part of these applications 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 and must therefore be declared admissible.

12. As regards the complaint raised under Article 5 § 3 of the Convention in application no. 8747/02, the Court observes that the first applicant's pre-trial detention began on 26 October 1996 with his arrest and ended on 24 October 2002 with his conviction by the State security Court. The period to be taken into consideration is therefore five years and eleven months. During this time, 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; *Dereci v. Turkey*, no. 77845/01, 24 May 2005). 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 first applicant's pre-trial detention contravened Article 5 § 3 of the Convention. There has accordingly been a violation of this provision in respect of the first applicant.

13. As regards the complaint concerning the excessive length of the proceedings involving both applicants, the Court observes that the period to be taken into consideration began on 26 and 29 October 1996 respectively with the applicants' arrest and ended on 11 March 2003. It has thus lasted six years and four months for two levels of jurisdiction. The Court reiterates

that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

14. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Pélissier and Sassi*, cited above). 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. The Court therefore considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 in respect of both applicants.

15. As regards the complaint raised concerning the lack of legal assistance to the applicants during their police custody, the Court observes that it has already examined the same grievance in the case of *Salduz v. Turkey* and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 ([GC], no. 36391/02, §§ 56-62, 27 November 2008). There are no particular circumstances in the present cases which would require the Court to depart from its findings in the aforementioned *Salduz* judgment. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in respect of both applicants.

16. Finally, having regard to its finding of a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention, the Court considers that it is unnecessary to examine a further complaint by the second applicant under Article 6 § 3 (d) of the Convention (*Tezcan Uzunhasanoğlu v. Turkey*, no. 35070/97, § 23, 20 April 2004).

17. Concerning just satisfaction, the first applicant, Mr Halis Geçgel, claimed 20,000 Turkish liras (TRY) (approximately 9,200 euros (EUR)) in respect of non-pecuniary damage. Based on the Diyarbakır Bar Association's scale of fees, he further requested TRY 9,900 (approximately EUR 4,500) in respect of costs and expenses. The second applicant, Mr Recep Çelik requested TRY 30,500 (approximately EUR 14,000) in respect of pecuniary damage and TRY 40,000 (approximately EUR 18,500) in respect of non-pecuniary damage. Based on the Diyarbakır Bar Association's scale of fees, he claimed TRY 12,650 (approximately EUR 5,800) for costs and expenses.

18. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, in respect of non-pecuniary damage, ruling on an equitable basis, it awards EUR 7,000 to the first applicant Mr Halis Geçgel and EUR 4,500 to the second applicant Mr Recep Çelik. It further considers that the most

appropriate form of redress would be the re-trial of the applicants in accordance with the requirements of Article 6 § 1 of the Convention, should they so request (see, *Salduz*, cited above, § 72).

19. 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, the applicants have not substantiated that they have actually incurred the costs claimed. Accordingly, it makes no award under this head.

20. 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 UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the remainder of the applications admissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the first applicant (no. 8747/02);
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings against both applicants;
5. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1, on account of the lack of legal assistance to the applicants while in police custody;
6. *Holds* that there is no need to examine the complaint under Article 6 § 3 (d) of the Convention in respect of the second applicant (no. 34509/03);
7. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) to Mr Halis Geçgel and EUR 4,500 (four thousand five hundred euros) to Mr Recep Çelik in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;

(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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President