



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

1959 · 50 · 2009

SECOND SECTION

CASE OF İNAN AND OTHERS v. TURKEY

(Applications nos. 19637/05, 43197/06 and 39164/07)

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 İnan and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

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 three applications (nos. 19637/05, 43197/06 and 39164/07) 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 three Turkish nationals, Mr Barış İnan, Mrs Muhabbet Kurt and Mr Azimet Ceyhan (“the applicants”), on 30 May 2005, 13 October 2006 and 27 August 2007, respectively.

2. The first applicant was represented by Mr F.N. Ertekin, Mr K. Öztürk, Mr T. Ayçık, Mr İ.C. Halavurt and Mrs F. Kılıçgün, lawyers practising in Istanbul. The second applicant was represented by Mr E. Kanar, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 17 June 2008 the Court joined the applications, declared them partly inadmissible and decided to communicate to the Government the complaints concerning the applicants' right to be released pending trial, the alleged rape of the second applicant while in police custody, an alleged lack of an effective domestic remedy whereby the second applicant could challenge the lawfulness of her detention and the right of the second and third applicants to a hearing within a reasonable time. It also decided to examine the merits of these complaints at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Application no. 19637/05 lodged by Mr Barış İnan

4. The applicant, Mr Barış İnan, is a Turkish national who was born in 1973 and is currently detained in the Kandıra F-type prison, in Kocaeli.

5. On 8 September 1998 the applicant was arrested during a police operation conducted against the MLKP (the Marxist-Leninist Communist Party). On 14 September 1998 a single judge at the Istanbul State Security Court ordered the applicant's pre-trial detention.

6. On 18 September 1998 the public prosecutor at the Istanbul State Security Court lodged a bill of indictment, charging the applicant with attempting to undermine the constitutional order, an offence proscribed by Article 146 § 1 of the former Criminal Code.

7. On 4 December 1998 the Istanbul State Security Court held the first hearing on the merits of the case (no. 1998/259).

8. According to the information in the case file last submitted by the parties, the criminal proceedings against the applicant are still pending at first instance, which is now the Istanbul Assize Court, and the applicant is still detained on remand. During the proceedings, the first-instance courts examined the applicant's continued detention at the end of every hearing, either on their own motion or upon the applicant's request. On each occasion the courts ordered the applicant's continued remand in custody, given the content of the file and the state of evidence.

B. Application no. 43197/06 lodged by Mrs Muhabbet Kurt

9. The applicant, Mrs Muhabbet Kurt, is a Turkish national who was born in 1978 and is currently detained in the Gebze prison, in Kocaeli.

10. On 8 September 1998 the applicant was arrested during a police operation conducted against the MLKP (Marxist-Leninist Communist Party). During her detention in police custody, the applicant was allegedly subjected to ill-treatment. In particular, she claimed to have been raped by police officers.

11. On 14 September 1998 the applicant, along with eleven other persons, was examined by a doctor at the Istanbul branch of the Forensic Medicine Institute who noted that none of them had sustained any injuries.

12. On the same day the applicant made statements to the public prosecutor at the Istanbul State Security Court and stated that she had been tortured while in police custody. The applicant was subsequently brought

before a single judge at the Istanbul State Security Court who ordered her pre-trial detention.

13. On 18 September 1998 the public prosecutor at the Istanbul State Security Court lodged a bill of indictment, charging the applicant with attempting to undermine the constitutional order, an offence proscribed by Article 146 § 1 of the former Criminal Code.

14. On 4 December 1998 the Istanbul State Security Court held the first hearing on the merits of the case (no. 1998/259).

15. During the hearing on 8 December 1999, the applicant alleged before the first-instance court that she had been raped while in police custody. At the end of the hearing, the State Security Court requested the public prosecutor's office to initiate an investigation into this allegation.

16. On 20 December 1999 the public prosecutor's office at the Istanbul State Security Court issued a decision based on a lack of jurisdiction and passed the investigation to the Fatih public prosecutor's office.

17. On 3 July 2000 the Fatih public prosecutor issued a decision not to prosecute anyone in relation to the applicant's allegations, holding that there was insufficient evidence to bring criminal proceedings. The public prosecutor noted that the applicant did not apply to the national authorities at the end of her detention in police custody until 8 December 1999. He further noted that the medical reports issued at the end of her police custody period did not indicate any sign of violence on her person.

18. 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 and her co-accused was transferred to the Istanbul Assize Court.

19. During the hearings of 4 July and 24 October 2007, the applicant and her representatives primarily challenged the reliability and admissibility in evidence of the statements taken from her in police custody under duress. In particular, the applicant repeated her allegations of rape and requested the court to order the public prosecutor's office to investigate her allegations of ill-treatment. The assize court heard four witnesses on behalf of the applicant who testified that, at the end of her detention in police custody in 1998, the applicant had claimed to have been raped and that she had been depressed. On both occasions, noting that there had already been an investigation into the applicant's allegations of ill-treatment, the trial court rejected the applicant's requests.

20. According to the information in the case file last submitted by the parties, the criminal proceedings against the applicant are still pending before the Istanbul Assize Court and the applicant is still detained on remand. During the proceedings, the first-instance courts examined the applicant's continued detention at the end of every hearing, either on their own motion or upon the applicant's request. The courts ordered the applicant's continued remand in custody, given the content of the file and the state of evidence on each occasion. On one occasion, the applicant filed

an objection against the first-instance court's remand decision, which was subsequently dismissed by another assize court on 23 August 2006.

C. Application no. 39164/07 lodged by Mr Azimet Ceyhan

21. The applicant, Mr Azimet Ceyhan, is a Turkish national who was born in 1970 and is currently detained in the Kandıra F-type prison, in Kocaeli.

22. On an unspecified date in 2000 criminal proceedings were brought against the applicant before the Istanbul State Security Court on the charge of attempting to undermine the constitutional order, an offence proscribed by Article 146 of the former Criminal Code. The State Security Court ordered the applicant's pre-trial detention.

23. Subsequently, the case against the applicant (no. 2000/30) was joined to case no. 1998/259 pending before the Istanbul State Security Court.

24. On 21 February 2000 the applicant was arrested and brought before a single judge at the Istanbul State Security Court, who ordered the applicant's detention pending trial.

25. According to the information in the case file last submitted by the parties, the criminal proceedings against the applicant are still pending at first instance, which is now the Fourteenth Chamber of the Istanbul Assize Court, and the applicant is still detained despite his numerous requests for release. During the proceedings, the first-instance courts examined the applicant's continued detention at the end of every hearing, either on their own motion or upon the applicant's request. The courts ordered the applicant's continued remand in custody, given the content of the file and the state of evidence on each occasion.

II. RELEVANT DOMESTIC LAW

26. A description of the domestic law at the relevant time may be found in *Barış v. Turkey*, (no. 26170/03, § 14, 31 March 2009) and *Çobanoğlu and Budak v. Turkey* (no. 45977/99, §§ 29-30, 30 January 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The second applicant, Mrs Muhabbet Kurt alleged under Article 3 of the Convention that she had been raped while in police custody.

28. The Government submitted that the applicant had failed to exhaust the domestic remedies available to her, within the meaning of Article 35 § 1 of the Convention as she did not file an objection against the decision of Fatih public prosecutor dated 3 July 2000. Alternatively, they maintained that, given that the aforementioned decision was the final decision regarding the applicant's allegations of ill-treatment, the applicant had failed to lodge her application with the Court within six months of that decision. The Government further contended that the applicant's allegations were baseless since she had failed to support them by any evidence.

29. The applicant replied that the statements of the witnesses who had testified on 4 July and 24 October 2007 before the Istanbul Assize Court constituted appropriate evidence in support of her allegations, and that the national authorities had failed to take them into consideration or order her psychological examination. She further noted that she had not lodged her application with the Court out of time, as she had brought her allegations to the attention of the Istanbul Assize Court as late as 2007.

30. The Court reiterates at the outset that an appeal against decisions of public prosecutors not to prosecute constitutes, in principle, an effective and accessible remedy within the meaning of Article 35 § 1 of the Convention (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 52, 18 December 2007; *Hıdır Durmaz v. Turkey*, no. 55913/00, § 29, 5 December 2006; *Saraç v. Turkey* (dec.), no. 35841/97, 2 September 2004; *Nuray Şen v. Turkey* (dec.), no. 41478/98, 30 April 2002). The Court observes in the present case that the applicant did not avail herself of this remedy by lodging an appeal against the Fatih public prosecutor's decision of 7 July 2000, and did not indicate any circumstances which would dispense her from doing so. Even assuming that the applicant's circumstances could have caused her to feel vulnerable, powerless and apprehensive of the representatives of the State following her detention in custody (see *İlhan v. Turkey* [GC], no. 22227/93, § 61, ECHR 2001-I), the Court points out that the applicant was represented by a lawyer in the course of the criminal proceedings against her and that her representative could have lodged an objection against the decision of the public prosecutor.

31. The Court further notes that in their submissions to the Istanbul Assize Court in July and October 2007, the applicant and her representatives primarily challenged the reliability and admissibility in evidence of the statements taken from her in police custody and relied on the witness statements according to which the applicant had been depressed following her remand in custody (see paragraph 19 above). Moreover, while the assize court rejected the applicant's request for a new investigation as an inquiry had already been held, it also noted that the applicant could apply to the public prosecutor's office, had she had new evidence in her possession. However, the applicant failed to do so.

32. This being so, the Court is of the opinion that, by failing to object to the decision of 7 July 2000 and to pursue her allegations of ill-treatment at the domestic level in 2007, the applicant failed to exhaust the remedies available to her in domestic law. The Court therefore accepts the Government's objection. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 5 and 6 OF THE CONVENTION

33. All three applicants complained that their detention during the criminal proceedings brought against them has exceeded the “reasonable time” requirement of Article 5 § 3 of the Convention. The second applicant further complained under Article 5 § 4 of the Convention that there had been no effective domestic remedy by which to challenge the lawfulness of the first-instance court's detention orders. The second and third applicants also complained under Article 6 § 1 of the Convention of the length of the criminal proceedings brought against them.

A. Admissibility

34. The Government submitted that these complaints should be rejected for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. The Government argued that the applicants could have sought compensation pursuant to Law no. 466 on the Payment of Compensation to Persons Unlawfully Arrested or Detained and Article 141 of the Code of Criminal Procedure (Law no. 5271).

35. The applicants contested the availability and effectiveness of these remedies.

36. The Court has already examined and rejected the Government's preliminary objection in similar cases (see, for example, *Bayam v. Turkey*, no. 26896/02, § 16, 31 July 2007; *Barış*, cited above, §§ 17 and 18). 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 and finds that these complaints are admissible.

B. Merits

1. Article 5 § 3 of the Convention

37. The Government maintained that the length of the applicants' pre-trial detention has been reasonable. In particular, they submitted that the seriousness of the crime, the risk of escape, together with the special

circumstances of the case, had justified their continued detention pending trial.

38. The applicants maintained their allegations.

39. The Court observes that in the instant case the first and second applicants' detention began on 8 September 1998 when they were taken into police custody and they are still so remanded. Their pre-trial detention has thus lasted some eleven years. The detention of the third applicant began on 21 February 2000 when he was arrested and also continues. He has been detained on remand for over nine years and seven months.

40. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present applications (see, for example, *Dereci v. Turkey*, no. 77845/01, §§ 34-41, 24 May 2005; *Atıcı v. Turkey (no. 1)*, no. 19735/02, §§ 48-51, 10 May 2007; *Çarkçı v. Turkey*, no. 7940/05, §§ 18-21, 26 June 2007). 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 in the present cases. Having regard to its case-law on the subject, the Court finds that the length of the applicants' detention pending the criminal proceedings against them was excessive and contravened Article 5 § 3 of the Convention. There has accordingly been a violation of this provision.

2. Article 5 § 4 of the Convention

41. The Government submitted that the second applicant's complaint under this provision was unsubstantiated as she had a remedy in domestic law whereby she could challenge the lawfulness of her detention.

42. The applicant maintained her allegation.

43. The Court refers to its constant case-law that the Turkish legal system did not offer a remedy which was genuinely adversarial or which could offer reasonable prospects of success (see, for example, *Koştı and Others v. Turkey*, no. 74321/01, § 22, 3 May 2007; *Bağrıyanık v. Turkey*, no. 43256/04, §§ 50 and 51, 5 June 2007; *Doğan Yalçın v. Turkey*, no. 15041/03, § 43, 19 February 2008). It finds no reason to depart from that conclusion in the present case. Consequently, the Court finds that the second applicant has also suffered a violation of Article 5 § 4 of the Convention.

3. Article 6 § 1 of the Convention

44. The Government maintained that, in the circumstances of the present case, the length of the criminal proceedings could not be considered to have been unreasonable. In this respect they referred to the number of defendants who had been on trial for terrorism-related offences. The Government further submitted that the third applicant and his representative had contributed to the prolongation of the proceedings by not attending a

number of hearings. Finally, they maintained that there was no delay in the proceedings which could be attributed to the authorities.

45. The second and third applicants maintained their allegation.

46. The periods to be taken into consideration are some eleven years for the second applicant and nine years and seven months for the third applicant, before one level of jurisdiction. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present applications (see, for example, *Sertkaya v. Turkey*, no. 77113/01, § 21, 22 June 2006; *Hasan Döner v. Turkey*, no. 53546/99, § 54, 20 November 2007; *Uysal and Osal v. Turkey*, no. 1206/03, § 33, 13 December 2007). In the present case, the Court observes that neither the complexity of the case nor the alleged conduct of the third applicant is sufficient to explain the delays in the conduct of the proceedings. The Court there finds no reason to depart from the conclusions of the cases cited above.

47. There has therefore been a breach of Article 6 § 1 of the Convention due to the excessive length of the criminal proceedings against the second and third applicants.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The first applicant claimed 34,400 euros (EUR) and 30,000 as to pecuniary and non-pecuniary damage respectively. The second applicant claimed 90,000 Turkish liras (TRY) (approximately EUR 41,200) and TRY 100,000 (approximately EUR 45,770) for pecuniary and non-pecuniary damage respectively. Finally, the third applicant claimed EUR 20,000 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

50. The Government contested these claims.

51. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects these claims. However, deciding on an equitable basis, it awards the first applicant EUR 9,000 and the second applicant EUR 13,500 in respect of non-pecuniary damage. Under the same head, the Court awards the third applicant his claim in full.

52. Furthermore, according to the information submitted by the parties, the criminal proceedings against the applicants are still pending and the applicants are still detained on remand. 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 applicants as speedily as possible, while taking into account the requirements of the proper administration of justice, and/or to release the applicants pending the outcome of these proceedings (see *Mehmet Ali Çelik v. Turkey*, no. 42296/07, § 26, 27 January 2009; *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007; *Batmaz v. Turkey* (dec.), no. 34497/06, 1 April 2008).

B. Costs and expenses

53. The first applicant claimed EUR 420 for the costs and expenses incurred before the domestic courts and EUR 8,479 for those incurred before the Court. In support of his claims, the applicant submitted a receipt according to which he had paid TRY 2,596 (EUR 1,230) to his representative for his representation before the Court. He also submitted a legal fee agreement concluded with his lawyers according to which the applicant would pay his lawyers 25% of the award made by the Court. The first applicant finally submitted receipts of postal and translation costs. The second applicant claimed EUR 12,190 for the costs and expenses incurred before the domestic courts and EUR 8,000 for those incurred before the Court. The second applicant did not submit any documents to substantiate her claims. The third applicant claimed TRY 47 (EUR 24) for the translation expenses and submitted a receipt in support of his claim.

54. The Government contested these claims.

55. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims for costs and expenses in the domestic proceedings. The Court considers it reasonable to award the first applicant the sum of EUR 1,500 for the proceedings before the Court. The Court further awards the third applicant EUR 24 for the present proceedings before the Court. It finally rejects the second applicant's claims under this head in the absence of any documentation.

C. Default interest

56. 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 following complaints admissible:
 - all applicants' complaint concerning their right to be released pending trial,
 - the second applicant's complaint concerning the alleged lack of an effective domestic remedy whereby she could challenge the lawfulness of her detention on remand, and
 - the second and third applicants' complaint concerning their right to a fair hearing within a reasonable time;
2. *Declares* inadmissible the remainder of the applications;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of all three applicants;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the second applicant, Ms Muhabbet Kurt;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the second and third applicants, Ms Muhabbet Kurt and Mr Azimet Ceyhan;
6. *Holds*
 - (a) that the respondent State is to pay the applicants 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) to Mr Barış İnan in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 13,500 (thirteen thousand five hundred euros) to Mrs Muhabbet Kurt in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (iii) EUR 10,000 (ten thousand euros) to Mr Azimet Ceyhan in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (iv) EUR 1,500 (one thousand five hundred euros) to Mr Barış İnan in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (v) EUR 24 (twenty-four euros) to Mr Azimet Ceyhan in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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;

7. *Dismisses* the remainder of the applicants' claims 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