



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28505/95
by Hüseyin ÜLGER
against Turkey

The European Court of Human Rights (First Section), sitting on 27 June 2000 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr B. Zupančič,
Mr T. Panfıru,
Mr R. Maruste, *judges*,
Mr F. Gölcüklü, *ad hoc judge*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 14 July 1995 and registered on 12 September 1995,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Turkish national, born in 1952 and living in Ankara. He is represented before the Court by Mr Aydın Erdoğan, a lawyer practising in Ankara.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. The circumstances of the case

On 18 March 1995 members of the illegal organisation TDP (*Türkiye Devrim Partisi* - Turkish Revolution Party) made a demonstration in Ankara. During the demonstration some participants started chanting slogans. The police intervened and the demonstrators resisted the police intervention. They were subsequently taken into police custody. In their statements to the police they stated that the applicant was a member of the TDP.

On 19 March 1995 the applicant was taken into custody by the police officers from Ankara Police Headquarters on suspicion of being a member of the TDP.

In a police report dated 19 March 1995 and signed by the applicant it is stated that the applicant whose name appeared in the statements of the members of the TDP was arrested in Z.E.'s house in the course of a series of operations conducted against the members of illegal organisations. It is further stated in the report that some publications were found in Z.E.'s house.

On 20 March 1995 the Ankara Police Headquarters requested the public prosecutor attached to the Ankara State Security Court to authorise an extension of the applicant's and the sixteen detainees' detention period.

On 20 March 1995 the public prosecutor at the Ankara State Security Court authorised the Ankara Police Headquarters to extend the detention period until 31 March 1995.

On 23 March 1995 the applicant was interrogated by the police officers. During the interrogation the applicant stated that he was the leader of the Central Anatolia region of the TDP and that before the coup d'état in 1980 he was a member of the TKP/B (*Türkiye Komünist Partisi/Birlik*-Turkish Communist Party/Union). He was arrested in 1981 and was then convicted and sentenced to six years' imprisonment. He was released in 1988. Following his release he continued his activities in the TKP/B. He also involved in the activities of the YKK (*Kürdistan Komünistler Birliği*-The Union of Kurdistan Communists). He went to Athens with a forge passport in order to participate the meeting of the TKP/B. He was detained on remand in January 1989 and was subsequently acquitted. In October 1990 he went to Greece without a passport. After having stayed in Greece for 8 months he returned to Turkey.

On an unspecified date the applicant was questioned by the public prosecutor at the Ankara State Security Court. During the questioning the applicant denied the allegations against him and stated that he signed his statement under duress in police custody.

On 29 March 1995 a judge at the Ankara State Security Court ordered the applicant's detention on remand.

In an indictment dated 28 April 1995 the public prosecutor at the Ankara State Security Court charged the applicant with being a member of the TDP. The prosecutor requested that the applicant be convicted and sentenced under Article 168 § 1 and 17 of the Turkish Criminal Code and Article 5 of Law 3713.

On 23 January 1996 the Ankara State Security Court convicted the applicant of membership of TDP pursuant to Article 168 § 2 of the Turkish Criminal Code and Article 5 of Law 3713. It sentenced the applicant to twelve years and six months' imprisonment and debarred him from employment in public service.

On 11 June 1997 the Court of Cassation upheld the decision of the Ankara State Security Court.

B. Relevant domestic law and practice

Article 19 of the Constitution provides:

"Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with the formalities and conditions prescribed by law:

...

The arrested or detained person must be brought before a judge within forty-eight hours at the latest or, in the case of offences committed by more than one person, within fifteen days ... These time-limits may be extended during a state of emergency.

A person deprived of his liberty for whatever reason shall have the right to take proceedings before a judicial authority which shall give a speedy ruling on his case and order his immediate release if it finds that the deprivation of liberty was unlawful.

Compensation must be paid by the State for damage sustained by persons who have been victims of treatment contrary to the above provisions, as the law shall provide."

1. Criminal law provisions

The relevant provisions of the Criminal Code read as follows:

Article 125

"It shall be an offence, punishable by the death penalty, to commit any act aimed at subjecting the State or any part of the State to domination by a foreign State, diminishing the State's independence or removing part of the national territory from the State's control."

Article 168

"Any person who, with the intention of committing the offences defined in Article 125 ..., forms an armed gang or organisation or takes leadership ... or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen years' imprisonment.

The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment."

Under section 3 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991), the offence defined in Article 168 of the Criminal Code is classified as a “terrorist act”. Under section 4, the offence defined in Article 169 of the same Code is classified in the category of “acts committed to further the purposes of terrorism”. Pursuant to section 5 of Law no. 3713, penalties laid down in the Criminal Code as punishment for the offences defined in sections 3 and 4 of the Act are increased by one half.

2. The law relating to detention in police custody

Pursuant to Article 128 of the Code of Criminal Procedure, a person arrested and detained shall be brought before a justice of the peace within twenty-four hours. This period may be extended to four days when the individual is detained in connection with a collective offence.

At the material time section 30 of Law no. 3842 of 18 November 1992, amending the legislation on criminal procedure, provided that, with regard to offences within the jurisdiction of the state security courts, any arrested person had to be brought before a judge within forty-eight hours at the latest, or, in the case of offences committed by more than one person, within fifteen days.

Under section 9 of Law no. 2845 on procedure in the state security courts, only these courts can try cases involving the offences defined in Articles 125 and 168 of the Criminal Code.

Section 1 of Law no. 466 on the payment of compensation to persons unlawfully arrested or detained provides:

“Compensation shall be paid by the State in respect of all damage sustained by persons

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute law;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time-limit laid down by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time-limit for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being arrested or detained in accordance with the law, are not subsequently committed for trial ..., or are acquitted or discharged after standing trial; or

(7) who have been sentenced to a period of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only.”

COMPLAINTS

The applicant complains under Article 5 § 1 (c) of the Convention that there existed no reasonable suspicion for his arrest.

The applicant complains under Article 5 § 2 of the Convention that he was not informed the reasons of his arrest.

The applicant complains under Article 5 § 3 of the Convention that he was kept in police custody for ten days without being brought before a judge.

The applicant complains under Article 5 § 4 of the Convention that Turkish law does not provide any remedy by which he can challenge the lawfulness of his arrest.

The applicant complains under Article 5 § 5 of the Convention that he was deprived of his right to compensation in relation to the lawfulness of his arrest.

THE LAW

The applicant complains that he was taken into custody unlawfully, not informed the reasons of his arrest, not brought promptly before a judge, deprived of his right to challenge the lawfulness of his arrest and deprived of his right to compensation. He invokes Articles 5 §§ 1, 2, 3, 4 and 5 of the Convention.

1. The Government's preliminary objection

The Government submit that the applicant has failed to exhaust domestic remedies. The applicant has not invoked Article 19 of the Constitution, which avails compensation be awarded for those who had been unlawfully deprived of their liberty before the national authorities. It would also have been possible for the applicant to apply for compensation using the procedure laid down in Law no. 466 for those who had been unlawfully deprived of their liberty or, having been detained in accordance with a procedure prescribed by law, had been acquitted, among other possible outcomes.

The applicant refutes the Government's argument. He claims that the remedies suggested by the Government are ineffective in his case. He submits that Law no. 466 provides that compensation shall be awarded to persons who have unlawfully detained and to persons detained pending trial who are subsequently acquitted. As his length of detention would appear to be in conformity with domestic law any claim for compensation lodged under Law no. 466 would have been futile.

The Court would stress the importance of Article 5 in the Convention system: it enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. Judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in Article 5 § 3, which is intended to minimise the risk of arbitrariness and to ensure the rule of law (see, the Brogan and Others judgment of 29 November 1988, Series A. no. 145-B, p. 32, § 58).

The Court reiterates that the existence of a remedy must be sufficiently certain, failing which it will lack the accessibility and effectiveness required for the purposes of Article 5 (see, among other authorities, *mutatis mutandis*, the Van Droogenbroeck v. Belgium judgment of 24 June 1982, p. 30, § 54, the De Jong, Baljet and Van den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77, p. 19, § 39, and the Yağcı and Sargın v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 17, § 42).

However, the file supplied to the Court contains no example of any person detained in police custody having successfully invoked Article 19 of the Constitution or Article 5 of the Convention when applying to a judge for a ruling on the lawfulness of his detention or for his release. The Court does not consider itself to be required to determine this question of Turkish law. However, the lack of precedents indicates the uncertainty of this remedy in practice (see, *mutatis mutandis*, the above-mentioned Van Droogenbroeck judgment, p. 31, § 55, and the above-mentioned De Jong, Baljet and Van den Brink judgment, p. 19, § 39, the Sakik and Others v. Turkey judgment of 26 November 1997, p. 16, § 53).

As to the Government's objection relating to Law no. 466, the Court notes that the provision concerned contemplates compensation for unlawful deprivation of liberty – a situation which did not obtain in the present case – and compensation paid to persons who have been lawfully detained but who are subsequently not committed for trial, or are acquitted or discharged after standing trial (see the Sakik and Others judgment cited above, § 60 and the Demir and others judgment of 23 September 1998, p. 12, § 36). The Court observes that the latter case is not relevant either, since the applicant's conviction was upheld at last instance by the Court of Cassation on 11 June 1997.

The Court accordingly dismisses the preliminary objection.

2. Merits

i. Alleged violation of Article 5 § 1(c) of the Convention

The Government submit that regarding the seriousness and the nature of the terrorist acts in question there existed reasonable suspicion to arrest the applicant.

The applicant maintains his account of events.

The Court notes that the "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). The Court further notes that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances (see, the Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, § 32).

In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including information from secret sources. Further, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge (see, the above mentioned Fox, Campbell and Hartley judgment, § 32).

In the instant case it appears that the applicant has been taken into custody in the course of a series of operations conducted against the members of terrorist organisations and on the basis of the information given by the previously arrested members of the TDP.

The aforementioned elements on their own are sufficient to support the conclusion that there was "reasonable suspicion" for the applicant's arrest.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

ii. Alleged violation of Article 5 § 2 of the Convention

The applicant claims that he was not informed of the reasons of his arrest.

The Court notes that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4 (see, the van der Leer judgment of 21 February 1990, Series A no. 170, p. 13, § 28 and the above mentioned Fox, Campbell and Hartley judgment, § 40).

In the instant case it seems that the applicant was informed the reasons of his arrest having regard to the fact that he had signed a police report stating that he was arrested in the course of a series of operations conducted against the members of illegal organisations. The report further states that the applicant's name appeared in the statements of previously arrested members of the TDP.

The Court, therefore, concludes that the applicant was sufficiently informed the reasons of his arrest.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

iii. Alleged violation of Article 5 § 3, 4 and 5 of the Convention

The Government maintain that the nature and scale of the terrorist threat in Turkey and the particular difficulties encountered in taking action to ward off the threat, which was incomparably more serious and more imminent than the threat posed by other examples of terrorism in Europe. They draw attention to the extremely serious nature of the terrorist offences in question and highlight that the Court had already acknowledged in the past the special features and difficulties of investigating terrorist offences.

In reply the applicant submits that struggle with terrorism cannot be considered as a justification for violation of his fundamental rights.

The Court considers, in the light of the parties' submissions that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaints that he was not brought promptly before a judge and that he was deprived of his right to challenge the lawfulness of his arrest and to compensation within the meaning of Article 5 §§ 3, 4 and 5 of the Convention,

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Elisabeth Palm
President

Commented [Note1]: Summarise the complaints without necessarily citing the invoked Convention Articles.