

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

SECOND SECTION

CASE OF BULUT v. TURKEY

(Application no. 56982/10)

JUDGMENT

STRASBOURG

13 June 2017

This judgment is final but it may be subject to editorial revision.



In the case of Bulut v. Turkey,

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

Julia Laffranque, *President,*
Paul Lemmens,
Valeriu Griţco, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 16 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 56982/10) 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 Velat Bulut ("the applicant"), on 6 September 2010.

2. The applicant was represented by Mr M. Erbil, lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 1 March 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1992 and lives in Istanbul.

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

6. On 15 February 2009 the applicant was arrested by police officers from the Istanbul Police Headquarters on suspicion of being involved in the activities of a terrorist organisation.

7. On 18 February 2009 the applicant's statement was taken by the public prosecutor. The same day the investigating judge at the Istanbul Assize Court ordered that the applicant be detained on remand taking into account the strong suspicion that the applicant had committed the offence he was charged with and risk of tampering with evidence.

8. On 27 March 2009 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court. He charged the applicant with membership

of an armed terrorist organisation, making the propaganda of an armed terrorist organisation, contravening the Meetings and Demonstration Marches Act (Law no. 2911), and causing damage to public property.

9. On 5 May 2009 at the end of the preparatory hearing, the Istanbul Assize Court decided that the applicant's detention should be continued taking into account the nature of the offence, the state of evidence and the fact that his statements had not yet been taken.

10. On 2 October 2009 the applicant's trial resumed. At the first hearing, in the presence of the applicant, the court ordered that the applicant's detention on remand be continued on the same grounds.

11. At hearings held on 16 February 2010 and 8 June 2010, respectively, the applicant's requests to be released from detention on remand were rejected by the trial court. The applicant filed objections against these decisions. On 15 March 2010 and 7 July 2010, the Istanbul Assize Court dismissed the objections. The court decided on the basis of the case file, without holding a public hearing. In delivering its decisions, the court also took into consideration the written opinion of the public prosecutors, which had not been communicated to the applicant or his representative.

12. On 23 November 2010 the Istanbul Assize Court released the applicant from detention on remand taking into account the period he had remained in detention.

13. On 17 October 2010 the case was transferred to the Juvenile Court.

14. According to the information in the case file, the case is still pending before the Istanbul Anadolu Juvenile Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. A description of the relevant domestic law and practice can be found *Altınok v. Turkey* (no. 31610/08, §§ 28-32, 29 November 2011) and *A.Ş. v. Turkey* (no. 58271/10, § 34-35, 13 September 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

16. The applicant complained under Article 5 § 3 of the Convention about the excessive length of his detention on remand.

17. The Government rejected the allegation, submitting that the applicant had failed to exhaust domestic remedies, referring to the possibility of claiming compensation for unlawful detention under Article 141 § 1 (d) of the Code on Criminal Procedure ("CCP"). In this regard, the Government submitted several judgments of the Court of

Cassation where the latter emphasised that there is no need to wait for the proceedings to become final in order to decide on the compensation claims under above-mentioned article of CCP.

18. The applicant contested that argument.

19. The Court observes that the domestic remedy in application of Article 141 § 1 (d) of the CCP with regard to length of detention on remand was examined in the decision *A.Ş. v. Turkey* (no. 58271/10, § 85-95, 13 September 2016). The Court concluded in that decision that as of June 2015 the domestic remedy provided for in Article 141 § 1 (d) of the CCP had to be exhausted by the applicants (*A.Ş.*, cited above, § 92).

20. In the instant case, the Court notes that the applicant's detention ended on 23 November 2010 and the proceedings against him are still pending before the first-instance court. Consequently, as of June 2015 the applicant was entitled, even before related proceedings come to an end, to seek compensation under Article 141 § 1 (d) of the CCP. However, he failed to do so.

21. The Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *İçyer v. Turkey* (dec.), no. 18888/02, § 72, ECHR 2006-I). The Court has previously departed from this rule in cases concerning the above-mentioned remedy in respect of the length of detention, which became applicable after the final decision on the criminal proceedings (see also, among others, *Tutal and Others v. Turkey* (dec.), no. 11929/12, 28 January 2014). The Court takes the view that the exception should be applied in the present case as well.

22. As a result, taking into account the Government's objection, the Court concludes that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

23. The applicant complained under Article 5 § 4 the Convention that he did not have an effective remedy to challenge the lawfulness of his detention. He contended that his right to have an effective remedy was breached since his objections were dismissed by the appeal court on the basis of the public prosecutor's written opinions, which were not communicated to him or to his representative.

24. The Government contested that argument, submitting that the public prosecutors' opinions were very brief and identical and did not have any bearing on the decisions of the appeal courts. They further submitted that Law no. 6459, which entered into force on 30 April 2013, made the

communication of the public prosecutor's opinion to the accused or his lawyer obligatory. They therefore argued that the applicant did not suffer any significant disadvantage and that this complaint must be declared inadmissible.

25. The applicant contested these submissions.

26. The Court reiterates that it has already examined and rejected a similar objection of the Government's objections on the same issue (see, in particular, *Hebat Aslan and Firas Aslan v. Turkey,* no. 15048/09, §§ 68-83, 28 October 2014). The Court finds no particular circumstances in the instant case which would require it to depart from its findings concerning the above-mentioned application.

27. The Court notes that this part of 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.

28. Turning to the merits of the applicant's complaint, the Court observes that on 15 March 2010 and 7 July 2010, the Istanbul Assize Court dismissed the applicant's objections against the decisions prolonging his detention on remand. In delivering its decisions, the court took into consideration the written opinion of the public prosecutors, which had not been communicated to the applicant or his representative.

29. In this regard, the Court notes that the present case raises issues similar to the case of *Altınok v. Turkey* (no. 31610/08, §§ 57-61, 29 November 2011), where it found a violation of Article 5 § 4 of the Convention. There is no reason to depart from those findings.

30. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 4 of the Convention on account of the non-communication of public prosecutor's opinion to the applicant or his representative in the context of review proceedings of lawfulness of the applicant's detention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

31. The applicant complained under Article 5 § 5 of the Convention that he did not have an enforceable right to compensation.

32. The Government contested that argument. They maintained in this regard that the applicant could have sought compensation under Article 141 of the CCP.

33. The applicant contested these submissions.

34. The Court notes that the Government's preliminary objection is inextricably linked to the merits of the applicant's complaint under Article 5 § 5 of the Convention. It follows that this issue should be joined to the merits (see *Altınok*, cited above, §§ 65).

35. The Court considers that this part of 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 and must therefore be declared admissible.

36. The Court reiterates that paragraph 5 of Article 5 requires a remedy in compensation for a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (*Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). This right to compensation presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

37. In this connection, the Court notes that it has found that the applicant's right to have an effective remedy to challenge the lawfulness of his detention was infringed in the present case on account of non-communication of the public prosecutor's opinion (see paragraph 30 above). It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether or not Turkish law afforded the applicant an enforceable right to compensation for the breach of Article 5 in this case.

38. The Court observes that Article 141 of the former CCP provided for a possibility to apply for compensation in certain circumstances. However, none of the circumstances listed in the aforementioned provision included the possibility of seeking compensation for the lack of an effective remedy to challenge the lawfulness of detention as prescribed under Article 5 § 4 of the Convention. In this connection, the Court notes that the Government failed to submit any court decision where a litigant, who was in a similar situation as the applicant, could successfully seek compensation on the basis of Article 141 of the former CCP (see *Karaosmanoğlu and Özden v. Turkey*, no. 4807/08, § 84, 17 June 2014).

39. The Court observes that Law no. 5271, which was in force at the material time, did not provide for an enforceable right to compensation for the applicant's right to have an effective remedy under Article 5 § 4 of the Convention, as required by Article 5 § 5 (see *Altınok,* cited above, § 67).

40. The Court therefore rejects the Government's objection and concludes that there has been a violation of Article 5 § 5 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

41. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government invited the Court not to award the applicant with any pecuniary damage as his all complaints are manifestly ill-founded.

43. The Court, having regard to all the elements before it, considers that the finding of a violation of Article 5 §§ 4 and 5 constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicant (see *Ceviz v. Turkey*, no. 8140/08, § 64, 17 July 2012).

B. Costs and expenses

44. The applicant also claimed EUR 2,650 for the costs and expenses incurred for those incurred before the Court, but did not submit an invoice or any other documents in support of that claim.

45. The Government contested the claims.

46. 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 applicant has not substantiated his claim for costs and expenses. Accordingly, the Court makes no award under this head

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 §§ 4 and 5 of the Convention, concerning the non-communication of the public prosecutor's opinion to the applicant or his representative in the context of opposition proceedings, and the lack of compensation in this respect admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 §§ 4 and 5 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Julia Laffranque President