

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

SECOND SECTION

CASE OF HASDEMİR v. TURKEY

(Application no. 44027/09)

JUDGMENT

STRASBOURG

22 May 2012

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



In the case of Hasdemir v. Turkey,

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

Isabelle Berro-Lefèvre, *President,*
Guido Raimondi,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 17 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 44027/09) 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 Mehmet Hasdemir ("the applicant"), on 25 August 2009.

2. The applicant was represented by his sibling, Ms N. Hasdemir. The Turkish Government ("the Government") were represented by their Agent.

3. On 16 March 2010 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the right to be released pending trial, to have a compensatory remedy for the alleged breach of Article 5 and to be tried within a reasonable time, to the Government. Furthermore, by virtue of Article 29 § 1 of the Convention, the Court decided to rule on the admissibility and merits of the application at the same time.

4. As the issues raised in this application are subject of well-established case-law of the Court, the Court decided to assign the application to a Committee of three judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and is currently detained in İzmit F-type prison.

6. On 6 May 2000 the applicant was arrested and taken into police custody on suspicion of membership of a criminal profit-making organisation and carrying out illegal activities on its behalf.

7. On 8 May 2000 the investigating judge at the İstanbul State Security Court ordered the applicant's pre-trial detention.

8. On 19 June 2000 a bill of indictment was filed against the applicant and four other persons with the İstanbul State Security Court, accusing them of forming a criminal profit-making organisation and of being involved in incidents of murder, extortion and fraud.

9. On 30 January 2003 the first-instance court acquitted the applicant and the other accused of the former charge on the ground that the mental elements of the crime had not been established on their parts. It followed that it lacked jurisdiction to examine the other charges brought against them and transferred the proceedings to the Kartal Assize Court.

10. On 20 December 2004 the Court of Cassation quashed the judgment of the first-instance court, noting that the latter had erroneously acquitted the applicant and his co-accused of the charge concerned. In its decision, the court held that all components of forming a criminal profit-making organisation had been sufficiently established against the accused.

11. Subsequently, the case was remitted to the first-instance court.

12. Following the abolition of the State Security Courts by Law no. 5190, the İstanbul Assize Court resumed the criminal proceedings.

13. During the proceedings, the İstanbul Assize Court reviewed the lawfulness of the applicant's continued detention regularly at the end of each hearing or, at the latest, every thirty days, of its own motion, without holding any oral hearing.

14. At the hearing on 3 March 2010 the İstanbul Assize Court decided, once more, to extend the applicant's continued detention on account of the reasonable grounds of suspicion that he had committed the offences with which he was charged, and the state of the evidence in the case file.

15. On 5 January 2011 having regard to the period he had spent in detention, the İstanbul Assize Court released the applicant.

16. On the basis of the range of evidence in the case file, on 6 December 2011 the İstanbul Assize Court convicted the applicant of a number of crimes; including forming a criminal profit-making organisation, murder, abduction and extortion. Subsequently, the court sentenced the applicant to life imprisonment.

17. According to the information in the case file, the applicant lodged an appeal with the Court of Cassation, before which the proceedings are currently pending.

II. RELEVANT DOMESTIC LAW

18. The relevant sections of the Turkish Code of Criminal Procedure (Law no.5271) can be found in the judgment of *Araz v. Turkey* (no. 44319/04, §§ 15-16, 20 May 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Article 5 § 3 of the Convention

19. The applicant complained that the length of his pre-trial detention had been excessive, having caused him great distress and unbearable suffering. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

20. The Government contested the applicant's argument.

21. The Court notes that this complaint is admissible, as no ground for declaring it inadmissible has been established.

22. As regards the merits of the complaint, the Government submitted that the applicant's detention had been based on the existence of reasonable grounds of suspicion that he had committed an offence, and that it had been reviewed periodically by the competent authority in accordance with the requirements laid down by the domestic law.

23. The applicant was detained on 6 May 2000 and was convicted by the İstanbul Assize Court on 6 December 2011. The Court notes that after deducting the period between 5 January and 6 December 2011 when the applicant was released pending trial, from the total time of his detention, the period that he was held in pre-trial detention lasted for ten years and eight months (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, 16 January 2007).

24. The Court has frequently found violations of Article 5 § 3 of the Convention in cases disclosing comparable lengthy periods of pre-trial detention (see, for example, *Tutar v. Turkey*, no. 11798/03, § 20, 10 October 2006, and *Cahit Demirel v. Turkey*, no. 18623/03, § 28, 7 July 2009). 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, the Court finds that in the instant case the length of the applicant's pre-trial detention was excessive.

25. There has accordingly been a violation of Article 5 § 3 of the Convention.

B. Article 5 § 5 of the Convention

26. The applicant complained that he had had no right to compensation under the domestic law for the alleged violation of his right to be released pending trial, as required by Article 5 § 5 of the Convention, which reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

27. The Government maintained that the applicant had not exhausted the remedies provided under Article 141 of the Turkish Code of Criminal Procedure (Law no. 5271).

28. 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.

29. 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.

30. 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.

31. In this connection, the Court notes that it has found that the applicant's right to be released pending trial was infringed in the present case (see paragraph 25 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.

32. The Court notes, as indicated by the Government, that Article 141 § 1(d) of the Law no. 5271 introduces a mechanism, whereby a person who has been lawfully detained but whose pre-trial detention exceeds a reasonable time, may demand compensation from the State. The Court also notes, however, that according to Article 142 § 1 of the same Code, such demand may only be made after the relevant criminal proceedings have come to an end. This remedy is therefore not available in circumstances where the domestic proceedings are still pending, as in the instant case (see Kürüm v. Turkey, no. 56493/07, §§ 18-21, 26 January 2010).

33. The Court thus considers that the Law no. 5271 does not provide for an enforceable right to compensation for the applicant's deprivation of

liberty in breach of Article 5 § 3 of the Convention, as required by Article 5 § 5.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant complained that the length of the criminal proceedings brought against him had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

36. The Government argued that the applicant could not be considered to have exhausted domestic remedies as the criminal proceedings were still pending before the domestic courts.

37. The Court notes that, according to its case-law, complaints concerning the length of proceedings can be brought before it prior to the final termination of the proceedings in question (see, among many others, *Plaksin v. Russia*, no. 14949/02, §§ 34-35, 30 April 2004). Accordingly, the Government's objection regarding non-exhaustion of domestic remedies must be dismissed. It further notes that this part of the application is not inadmissible on any other grounds and must, therefore, be declared admissible.

38. As regards the merits, the Court notes that the proceedings in question began on 6 May 2000 and, according to the information in the case file, they are still pending before the Court of Cassation. They have, thus, already lasted around twelve years before two levels of jurisdiction.

39. 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 *Hasan Döner v. Turkey*, no. 53546/99, § 54, 20 November 2007; *Uysal and Osal v. Turkey*, no. 1206/03, § 33, 13 December 2007; and *Can and Gümüş v. Turkey*, nos. 16777/06 and 2090/07, § 19, 31 March 2009). It finds no reason to reach a different conclusion in the present circumstances. Consequently, there has been a breach of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages and costs and expenses

40. The applicant claimed 120,000 Turkish Liras (TRY)[1] in respect of pecuniary and non-pecuniary damages on the basis of loss of his earning and the alleged anguish and distress he and his family had suffered. The applicant did not claim any amount under cost and expenses.

41. The Government contested the claim, maintaining that the applicant had failed to submit any documents supporting his claim.

42. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Ruling on an equitable basis, the Court awards the applicant EUR 11,900 in respect of non-pecuniary damage.

B. Default interest

43. The Court considers it appropriate that the default interest rate 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 remainder of the application admissible;

2. *Holds* that there have been violations of Article 5 §§ 3 and 5 and Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 11,900 (eleven thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

1. Approximately EUR 55,000

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Isabelle Berro-Lefèvre
Deputy Registrar	President