

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

SECOND SECTION

CASE OF OKUYUCU v. TURKEY

(Application no. 62657/12)

JUDGMENT

STRASBOURG

19 January 2021

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



In the case of Okuyucu v. Turkey,

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

Valeriu Griţco, *President,*
Branko Lubarda,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 19 January 2021,

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

INTRODUCTION

1. The case concerns the applicant's inability to be present before the appeal court examining his objection and the non-communication of the public prosecutor's written opinion, as well as the right to compensation under domestic law in respect of these complaints.

PROCEDURE

2. The case originated in an application (no. 62657/12) 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. Cengiz Okuyucu ("the applicant"), on 11 September 2012.

3. The applicant was represented by Mr H. Boğatekin, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1989.

5. On 8 March 2012 the applicant was taken into police custody on suspicion of membership of a terrorist organisation.

6. On 11 March 2012 the applicant was brought before the judge at the Istanbul Assize Court who placed him in detention on remand taking into consideration the nature of the offence, the state of evidence and the existence of a strong suspicion that the applicant had committed the offence.

7. On 19 March 2012 the applicant filed an objection against the detention order.

8. On 3 April 2012 the Istanbul Assize Court dismissed the objection without holding a hearing. In rendering its decision, the court took into

consideration the written opinion of the public prosecutor, which had not been communicated to the applicant or his representative.

9. On 12 June 2012 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court, mainly charging the applicant with membership of a terrorist organisation.

10. On 26 November 2012 the Istanbul Assize Court held a hearing and ordered the applicant's release.

11. On 14 March 2006 the Istanbul Assize Court acquitted the applicant of some charges and on the remaining charges, decided to suspend the criminal proceedings against the applicant pursuant to Law no. 6352. As no appeal was lodged, the judgment became final.

II. RELEVANT DOMESTIC LAW

12. A description of the relevant domestic law and practice can be found in *Altınok v. Turkey*, no. 31610/08, §§ 28-32, 29 November 2011.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

13. The Government maintained that the applicant had not exhausted the constitutional remedy, as he was still in detention on remand on 23 September 2012 when this remedy had entered into force and should have applied to the Constitutional Court ("TCC"). The Government also argued that the applicant had failed to exhaust the compensation remedy under Article 141 of the Code of Criminal Procedure ("CCP").

14. As regards the constitutional remedy, the Court notes that the decision rejecting the opposition lodged by the applicant and which is the subject of the present application was delivered on 3 April 2012, that is, on a date on which the constitutional remedy had not yet entered into force. As regards the compensation remedy, the Court notes that Article 141 of the CCP provides for the possibility for a person who has been the subject of a measure of preventive detention to claim compensation in certain limited cases. However, on reading that provision as it was in force at the time of the events, none of the cases listed provided for the possibility of claiming compensation for damage suffered as a result of the lack of an effective remedy to challenge pre-trial detention (*Altınok*, cited above, § 67). The Court therefore rejects the Government's preliminary objections.

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

A. The applicant's inability to be present before the appeal court examining his objections

15. Relying on Article 5 § 4 of the Convention, the applicant complained about not being able to appear before the appeal court when his pre-trial detention was reviewed.

16. The Government contested that argument.

17. In the present case, the applicant was placed in detention on remand on 11 March 2012 after being heard by a judge, in the presence of his lawyer. The applicant subsequently filed an objection against this detention decision, which was dismissed on 3 April 2012 by the appeal court, without holding an oral hearing. Nevertheless, the Court notes that the applicant had appeared before the Assize Court twenty-three days before his objection was examined by the appeal court. In these circumstances, the Court does not consider that a further oral hearing before the appeal court was required for the purposes of Article 5 § 4 (see *Altınok*, cited above, §§ 54-55, 29 November 2011; *Çelik v. Turkey*, no. 6670/10, §§ 20-22, 17 March 2015; *Adem Serkan Gündoğdu v. Turkey*, no. 67696/11, §§ 35-48, 16 January 2018; *Çeki v. Turkey*, no. 50070/10, §§ 29-34, 10 July 2018; and *Bağlar v. Turkey,* no. 40708/11, §§ 21-26, 10 October 2017).

18. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Concerning the non-communication of the prosecutor's opinion

19. The applicant complained that his objection was dismissed by the appeal court on the basis of the public prosecutor's written opinion, which was not communicated to him or to his representative.

20. The Government contested that argument.

21. 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.

22. The Court further notes that on 3 April 2012 the Istanbul Assize Court dismissed the applicant's objection. In delivering its decision, the Assize Court took into consideration the written opinion of the public prosecutor, which had not been communicated to the applicant or his representative. The Court notes that the present case raises issues similar to the case of Altınok (cited above, §§ 57-61), where it found a violation of

Article 5 § 4 of the Convention. There is no reason to depart from those findings.

23. 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 the public prosecutor's opinion to the applicant or his representative in the context of review proceedings.

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

24. The applicant complained under Article 5 § 5 of the Convention that he had been denied the right to compensation for the violation of his rights under Article 5 § § 1 to 4 of the Convention.

25. The Government contested that argument.

26. 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.

27. 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.

28. 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 the non-communication of the public prosecutor's opinion (see paragraphs 22-23 above). It also recalls that it has examined a similar issue in the case of Altınok (cited above, §§ 66-69), and found a violation of Article 5 § 5 of the Convention. There is no reason to depart from those findings.

29. Accordingly, it follows that there has been a violation of Article 5 § 5 of the Convention in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

31. The Court, having regard to all the elements before it, considers that the finding of a violation of Article 5 § 4 constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicant (see Ceviz, cited above, § 64).

32. The applicant also claimed 7,385 Turkish liras (TRY) for the costs and expenses incurred before the Court and for legal fees. In that connection, the applicant's lawyer did not submit any document.

33. 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 applicant's 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 and the lack of compensation in these respects, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the non-communication of the public prosecutor's opinion to the applicant or his representative;

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

4. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

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

Done in English, and notified in writing on 19 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Valeriu Griţco
Deputy Registrar	President