

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

SECOND SECTION

CASE OF TAŞ v. TURKEY

(Application no. 702/11)

JUDGMENT

STRASBOURG

24 October 2017

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



In the case of Taş v. Turkey,

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

Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 3 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 702/11) 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 Çetin Taş ("the applicant"), on 10 November 2010.

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

3. On 10 May 2012 the application was declared partly inadmissible and the complaints concerning the length of the applicant's pre-trial detention, the effectiveness of the procedure by which the applicant could challenge the lawfulness of his detention, and the applicant's right to compensation in these respects were communicated to the Government.

4. The Government objected to the examination of the application by a committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

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

7. On 7 December 2009 the applicant was arrested.

8. On 9 December 2009 the applicant was placed in detention on remand by the judge at the Istanbul Assize Court on suspicion of committing crimes on behalf of an illegal terrorist organisation, disseminating propaganda for

the same organisation, storage of hazardous materials, and damage to public property.

9. On 30 December 2009 the Istanbul public prosecutor filed his indictment with the Istanbul Assize Court.

10. On 6 May 2010 the first hearing was held before the Istanbul Assize Court. At the end of the hearing the court ordered the continuation of his detention in the presence of the applicant.

11. The applicant filed an objection against this decision. On 20 May 2010 the 10th Chamber of Istanbul Assize Court dismissed this objection without holding an oral hearing. In delivering 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.

12. On 10 December 2010 the applicant was released from detention on remand.

13. At the time when the application was lodged, the proceedings against the applicant were still pending before the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. A description of the relevant domestic law and practice can be found in *Altınok v. Turkey*, no. 31610/08, §§ 28-32, 29 November 2011; *Demir v. Turkey* (dec.), no. 51770/07, §§ 29-33, 16 October 2012; 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

15. Relying on Article 5 § 3 of the Convention, the applicant complained that the length of his detention on remand had been excessive.

16. 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").

17. The applicant contested that argument.

18. 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 cases of *Demir v. Turkey*, ((dec.), no. 51770/07, §§ 17-35, 16 October 2012), and *A.Ş. v. Turkey* (no. 58271/10, §§ 85-95, 13 September 2016).

19. In the case of *Demir* (cited above) the Court held that that remedy had to be exhausted by the applicants whose convictions became final. It

further ruled in its judgment of *A.Ş.* (cited above, § 92) 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 even before the proceedings became final.

20. In the instant case, the Court notes that the applicant's detention ended on 10 December 2010, when he was released from detention on remand, yet there is no any information about whether the proceedings against him are still pending or have become final. However, the Court observes that the applicant was entitled, in both situations, to seek compensation under Article 141 § 1 (d) of the CCP and that he must 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

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

23. Relying on Article 5 § 4 of the Convention, the applicant complained about not being able to appear before the court when his pre-trial detention was reviewed. The applicant also complained under Article 13 of the Convention about the lack of an effective remedy provided by the domestic legal system, whereby he could effectively challenge his continued pre-trial detention.

24. The Court considers that the applicant's complaint under Article 13 should be examined under Article 5 § 4 of the Convention, being the *lex specialis* in the matter.

25. The Government contested that argument.

26. In the present case, the applicant was placed in detention on remand on 9 December 2009. At the end of the hearing held on 6 May 2010, the trial court decided on the continuation of the applicant's detention after an

adversarial debate on this issue. The applicant subsequently filed an objection against this decision.

27. The Court observes that this objection was dismissed on 20 May 2010 by the 10th Chamber of Istanbul Assize Court, without holding an oral hearing. Nevertheless, the applicant had appeared before the trial court fourteen days before his objections were 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.

28. The Court thus concludes that the lack of an oral hearing during the proceedings did not jeopardise the principle of equality of arms (see *Altınok v. Turkey*, no. 31610/08, §§ 54-55, 29 November 2011; *Çatal v. Turkey*, no. 26808/08, § 40, 17 April 2012; and *Ali Rıza Kaplan v. Turkey*, no. 24597/08, §§ 28-32, 13 November 2014).

29. 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 public prosecutor's opinion

30. 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 objection was 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.

31. The Government contested that argument, submitting that the public prosecutor's 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.

32. 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.

33. 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.

34. Turning to the merits of the applicant's complaint, 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.

35. 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

36. 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 §§ 3 and 4 of the Convention.

37. The Government contested that argument.

38. 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.

39. 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.

40. 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 public prosecutor's opinion (see paragraph 34 above).

41. The Court notes that it examined a similar issue in the case of *Altınok* (cited above, §§ 66-69), where the Court found a violation of Article 5 § 5 of the Convention. There is no reason to depart from those findings.

42. Accordingly, the Court concludes that in the present case there has been a violation of Article 5 § 5 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

43. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government contested the claim.

45. 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. 8140/8, § 64, 17 July 2012).

B. Costs and expenses

46. The applicant also claimed EUR 1,570 in respect of lawyer's fees and EUR 900 for other costs and expenses incurred before the Court and the domestic authorities, such as stationery, photocopying and translations. In that connection, he submitted a cost-sheet drafted by his representative, and a receipt concerning the lawyer's fee.

47. The Government contested the claim.

48. 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, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 1,000 covering costs under all heads.

C. Default interest

49. 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 complaints raised 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 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 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. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(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 equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Julia Laffranque
Deputy Registrar	President