

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

SECOND SECTION

DECISION

Application no. 65194/10
Tayyar EROĞLU and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 27 March 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 20 August 2010,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Tayyar Eroğlu, Ms Resmiye Vatansever and Ms Zeliha Bulut, are Turkish nationals. The first applicant was born in 1982, and the second and third applicants in 1973. They are currently being detained pending trial in the Ankara F Type Prison and Ankara Women's Prison. The applicants are represented before the Court by Mr E. Kanar, a lawyer practising in Istanbul.

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

On 16 May 2006 the first and second applicants, Mr Tayyar Eroğlu and Ms Resmiye Vatansever, were arrested by police on suspicion of membership of an illegal organisation, namely the TIKKO (*Turkish Workers and Peasants' Liberation Army*).

On 20 May 2006 the two applicants and five other suspects were brought before the Niğde Magistrates' Court, which ordered their detention pending trial after having held a hearing. The court had regard to the nature of the offence, the state and incomplete collection of evidence, the absence of a fixed abode, the existence of a suspicion that they might abscond or go into hiding and of a strong suspicion that the applicants could tamper with evidence or exert pressure on witnesses and others. At the hearing, the first applicant denied the accusations and the second applicant exercised her right to remain silent.

On 5 August 2006 the third applicant, Ms Zeliha Bulut, was placed in pre-trial detention by the Ankara Magistrates' Court in connection with the same kind of offence.

On 6 October 2006 the Ankara Public Prosecutor filed a bill of indictment against the applicants, charging them with several counts of attempting to undermine the constitutional order, membership of an armed organisation, possession of explosives and extortion. The applicants alleged that they had not been given access to the investigation file until after the bill of indictment had been filed as it had been classified confidential.

From 13 December 2006 to 18 May 2010 the 11th Division of the Ankara Assize Court held sixteen hearings. No witnesses or victims were directly heard by the Assize Court, which instead sent letters rogatory to a number of other courts to question those persons (*talimatla ifade*). Although the applicants challenged the use of those courts, claiming that the witnesses should give statements in the applicants' presence, the Ankara Assize Court dismissed all their objections. The applicants' lawyer also argued that they had not been present at some hearings held by the rogatory courts to take statements.

Throughout the proceedings, the Assize Court examined the applicants' continued detention at the end of every hearing, either of its own motion or at the applicants' request. At the hearing of 18 May 2010 at which the applicants and their lawyer were present, they again challenged their continued detention. However, on each occasion, the court ordered the applicants' continued detention, having regard to the state of the evidence, the nature of the offence, the existence of a strong suspicion that the applicants had committed the offence, and the fact that the offence was one of those listed in Article 100 of the Criminal Procedure Code.

On 24 May 2010 the applicants objected to the decision of 18 May 2010 and again requested their release. The applicants argued that the strong suspicion was no longer a sufficient ground for their continued detention, which, therefore, was in breach of Article 5 of the Convention.

On 3 June 2010 the 12th Division of the Ankara Assize Court dismissed the applicants' objection without holding a hearing and after having obtained the written opinion of the public prosecutor. That opinion was not served on the applicants.

According to the case file as it stands, the proceedings against the applicants are still pending before the first-instance court.

COMPLAINTS

Relying on Article 5 § 3 of the Convention, the applicants complained that the first and second applicants' detention in police custody for four days had breached the notion of being promptly brought before a judge, that the length of all the applicants' pre-trial detention had been excessive and that the domestic courts had repeatedly extended their detention on identical grounds. Under Article 6 § 2 of the Convention, the applicants claimed that the length of their detention amounted to a breach of the principle of presumption of innocence.

The applicants contended under Article 5 § 4 and Article 6 § 3 (b) and (c) of the Convention that, in the investigation phase, they had not been able to obtain a copy of the case file in order to object to the extension of their detention because it had been classified confidential. The applicants next argued that they had been denied an effective hearing in the proceedings reviewing the lawfulness of their continued detention. In this connection, they maintained that equality of arms between the detainees and the public prosecutor should be respected and that no oral hearing had been held.

Relying on Article 6 § 1 of the Convention, the applicants complained that the criminal proceedings against them have not been concluded within a reasonable time.

The first and second applicants argued under Article 6 § 3 (a) of the Convention that they had not been promptly informed of the charges against them because the indictment had only been filed five months after they had first been detained.

The applicants also contended under Article 6 § 3 (d) of the Convention that the first-instance court had failed to hear any witnesses or victims in their presence.

Relying on Article 13 of the Convention, the applicants complained that there was no effective remedy provided in the domestic system for the complaints relating to the review of their continued detention.

Lastly, the applicants claimed under Article 14 of the Convention that the alleged absence of an effective remedy in respect of their complaints under Article 5 § 4 was discriminatory.

THE LAW

1. The applicants maintained under Article 5 §§ 3 and 4, Article 6 §§ 1 and 2, and Article 13 of the Convention that the length of their detention pending trial had been excessive and breached their right to be presumed innocent and that there had been no effective domestic remedies by which to challenge the lawfulness of their continued detention. Relying on Article 6 § 1 of the Convention, the applicants further complained that the length of the criminal proceedings against them was excessive.

The Court considers that these complaints should be examined from the standpoint of Article 5 §§ 3 and 4 and Article 6 §§ 1. It further considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The first and second applicants argued under Article 5 § 3 that they had not been promptly brought before a judge during their police custody.

The Court notes that the applicants' detention in police custody ended when they were detained pending trial on 20 May 2006, whereas this complaint was lodged with the Court on 20 August 2010, more than six months later. The Court therefore considers that this complaint must be rejected as being lodged outside the six-month time-limit under Article 35 §§ 1 and 4 of the Convention.

3. The first and second applicants next complained under Article 6 § 3 (b) and (c) of the Convention that, because of the decision to classify the case file confidential at the investigation phase, they could not obtain copies of the documents necessary to object to the extension of their detention.

The Court considers that the complaint should be examined under Article 5 § 4 of the Convention given that it relates to the examination of the lawfulness of the applicants' continued detention. However, the Court notes that the confidentiality order in question was lifted on 6 October 2006, namely on the date when the indictment was filed, whereas this complaint was lodged with the Court on 20 August 2010, more than six months later. The Court therefore considers that this complaint must be rejected as being lodged outside the six-month time-limit under Article 35 §§ 1 and 4 of the Convention.

4. Relying on Article 5 § 4 and Article 6 § 3 (b) and (c) of the Convention, the applicants complained of the absence of an oral hearing in the examination of their objection against their continued detention.

The Court considers that the complaint should be examined from the standpoint of Article 5 § 4 alone. The Court notes that Article 5 § 4 of the Convention in principle requires that a detained person be heard by a judge who examines the lawfulness of the continued detention. On the other hand, it guarantees the expeditious determination of the necessity of continued

detention or the order of a release. Therefore, the specific nature of the procedure for the review of detention does not require that detained persons should be heard every time they lodge an appeal against decisions extending their detention (see *Knebl v. the Czech Republic*, no. 20157/05, § 85, 28 October 2010).

The Court notes that in the Turkish legal system the lawfulness of a detainee's continued detention is subject to automatic review by the trial court each time a hearing is held. In addition to this, the domestic courts must conduct a review on their own motion at least every thirty days in between hearings. Besides, a detained person may request to be released at any time in the course of the proceedings without having to wait a certain period of time. Furthermore, all decisions relating to pre-trial detention, whether they were taken following a request or automatically, can be challenged before a court.

The Court observes that the applicants appeared before the first-instance court at the hearing on 18 May 2010, when they orally presented their arguments against their continued detention. Following the first-instance court's refusal, the applicants lodged an objection with a higher court. In accordance with the procedure prescribed by the domestic law, on 3 June 2010 the 12th Division of the Istanbul Assize Court dismissed the applicant's objection without holding an oral hearing.

The Court notes that the applicants were given an opportunity to make oral submissions before the trial court at a hearing on 18 May 2010, which took place 16 days before their claim was examined by the appeal court in review proceedings. Moreover, neither of the parties, namely the public prosecutor or the detained applicants, was invited to make any oral submissions before the appeal court. In that respect, the applicants were not put in a disadvantaged position *vis-à-vis* the prosecution. The Court further notes that the applicants always had the opportunity to introduce a new objection against their continued detention at any time in a hearing before the trial court.

Given the specific nature of the procedure under Article 5 § 4 of the Convention, involving the authorities' obligation to conduct a speedy review of the lawfulness of a person's continued detention, the Court considers that the procedural requirements inherent in this provision do not oblige the authorities to hold a hearing for the review of continued detention at short intervals in every instance (see *Altınok v. Turkey*, no. 31610/08, §§ 52/55, 29 November 2011).

The Court thus finds that this complaint is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

5. Relying on Article 6 § 3 (a) of the Convention, the first and second applicants claimed that they had not been promptly informed of the charges against them. Moreover, all the applicants argued under Article 6 § 3 (b) that the first-instance court had never heard any person in their presence.

The Court notes that, according to the information in the case file, the criminal proceedings against the applicants are currently pending before the Ankara Assize Court. For this reason, this complaint is premature and must therefore be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention (see, for example, *Koç v. Turkey* (dec.), no. 36686/07, 26 February 2008).

6. Lastly, the applicants contended under Article 14 of the Convention that the alleged absence of an effective remedy by which to challenge their continued detention was discriminatory.

In so far as the matters complained of are within its competence, the Court finds, in the light of all the material in its possession, that this complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints concerning the length of their pre-trial detention, the alleged absence of an effective remedy by which to challenge the decision extending their pre-trial detention and the length of the criminal proceedings against them;

Declares the remainder of the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President