

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

SECOND SECTION

DECISION

Application no. 1796/10
Yusuf POYRAZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 22 November 2016 as a Committee composed of:
Valeriu Griţco, *President,*
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*
Having regard to the above application lodged on 1 December 2009,
Having deliberated, decides as follows:

PROCEDURE

1. The case originated in an application (no. 1796/10) 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 Yusuf Poyraz ("the applicant"), on 1 December 2009.

2. The applicant was represented by Mr A. S. Sürücü, a lawyer practising in Izmir. The Turkish Government ("the Government") were represented by their Agent.

3. On 12 May 2011 the complaints concerning the length of the applicant's pre-trial detention and the criminal proceedings brought against him as well as his right to take proceedings to challenge the lawfulness of his detention and his right to an enforceable right to compensation were communicated to the Government.

THE FACTS

4. The applicant was born in 1972 and lives in İzmir.

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

6. On 6 June 2008 the applicant was arrested on suspicion of sexual abuse of his own two daughters. On the same day, the Izmir Magistrates' Court ordered the applicant's detention on remand having regard to the nature of the offence with which he had been charged and the state of evidence. The applicant objected to this decision.

7. On 12 June 2008 the İzmir Assize Court dismissed the applicant's objection having regard to nature of the offence, state of the evidence and the date of the detention.

8. On 11 July 2008 the İzmir public prosecutor filed a bill of indictment charging the applicant with sexual abuse of two minors, an offence prescribed by Article 103 of the Criminal Code.

9. On 21 July 2008 the İzmir Assize Court held a preparatory hearing and decided that the victims should undergo a forensic examination.

10. Between 16 September 2008 and 13 October 2010 the first-instance court held eighteen hearings. During the proceedings, the first-instance court examined the applicant's continued detention at the end of every hearing, either on their own motion or upon the applicant's request. On each occasion, the court ordered the applicant's continued detention having regard to the nature of the offence, the state of the evidence and the fact that there was still evidence to be collected. In particular, in a hearing held on 10 September 2009 the applicant's release request was rejected by the 11th Chamber of the İzmir Assize Court. Subsequently, on 24 September 2009 the 1th Chamber of the same court dismissed the applicant's objection on the basis of the case file.

11. On 13 October 2010 having regard to the period of the applicant's detention, the first-instance court released him pending trial.

12. Subsequently, the first-instance court held five more hearings and on 6 October 2011 the court convicted the applicant as charged and sentenced him to twenty years and ten months' imprisonment.

COMPLAINTS

13. Relying on Article 5 § 1 of the Convention, the applicant complained that the decision to place him in detention on remand had not been lawful and had lacked reasoning.

14. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention had been excessive and that in

dismissing his requests for release the courts had used identical, stereotyped reasoning.

15. Moreover, the applicant alleged under Articles 5 § 4 and 13 of the Convention that there had been no effective remedy provided by the domestic legal system whereby he could effectively challenge his continued pre-trial detention.

16. The applicant maintained under Article 5 § 5 that he had no right to compensation under domestic law in respect of his complaints under Article 5 §§ 1 to 4.

17. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had not been completed within a reasonable time and that his case had not been heard by an independent court.

18. The applicant also invoked Article 7, claiming that the length of his detention had turned into a punishment without a conviction against him.

19. Lastly, the applicant complained under Article 8 of the Convention that the nature of the offence that he had been charged with had violated his right to respect for private and family life.

THE LAW

A. Complaint under Article 5 § 3 of the Convention

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

21. The Court notes that the applicant was arrested on 6 June 2008 and was released on 13 October 2010. Accordingly, his pre-trial detention lasted for two years, four months and seven days.

22. The Court reiterates the general principles regarding the right "to a fair trial within a reasonable time or to release pending trial" as guaranteed by Article 5 § 3 of the Convention, and as set out in its previous judgments (see *Solmaz v. Turkey*, no. 27561/02, § 38-40, 16 January 2007; *Cahit Demirel v. Turkey*, no. 18623/03, §§ 23-25, 7 July 2009; and *Dereci v. Turkey*, no. 77845/01, § 35-36, 24 May 2005).

23. In the present case, the Court notes that, when ordering the applicant's continued detention, the domestic courts took into account the reasonable suspicion against the applicant, the serious nature of the offence with which he was charged and the state of evidence. In this connection, the Court observes that the applicant was charged with sexual abuse of his own two daughters and considers that the reasonable suspicion against the applicant of having committed these serious offences could have warranted his detention.

24. As to the grounds for the continued detention, the domestic courts applied law and practice under which there was a presumption that detention on remand was necessary in cases where the sentence faced went beyond a certain threshold of severity. The severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. The Court accepts that, in view of the seriousness of the charges brought against the applicant, the authorities could justifiably consider that such an initial risk was established. Nevertheless, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Gamze Uludağ v. Turkey*, no. 21292/07, § 35, 10 December 2013).

25. In the instant case, however, the applicant was charged two times with sexual abuse of minors for which he was subsequently sentenced to twenty years and ten months' imprisonment. The Court considers that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire period of two years and ten months.

26. It is also necessary to ascertain whether the national authorities displayed "special diligence" in the conduct of the proceedings. In this regard, the Court notes that there were no significant periods of inactivity on the part of the prosecution authorities and the trial court. The prosecution authorities completed the investigation within a period of one month and the Izmir Assize Court held the hearings in the applicant's case regularly and at short intervals. Furthermore, the first-instance court ordered the applicant's release taking into account the period of his detention.

27. In the light of foregoing, Court concludes that the authorities displayed "special diligence" in the conduct of the proceedings against the applicant.

28. It follows that this part of the application is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 5 § 4 of the Convention

29. Relying on Articles 5 § 4 and 13 of the Convention, the applicant complained that there had been no effective remedy whereby he could effectively challenge his detention on remand. In this connection, he complained that his objections had been examined on the basis of the case file without a thorough examination.

30. 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 (see *Doğan and Kalin v. Turkey*, no. 1651/05, § 15, 21 December 2010).

31. The Court notes that in the Turkish system, the question of prolonging detention is examined *ex proprio motu* at regular intervals (every

month during the pre-trial stage and at each hearing on the merits or more frequently at the trial stage). Furthermore, a detainee may lodge a request for release at any time during both the trial and the pre-trial stage and repeat that request without having to wait for any particular period. In addition, against every decision concerning detention on remand, whether taken at the detainee's request or *ex proprio motu*, an objection can be lodged (see *Altınok v. Turkey*, no. 31610/08, § 53, 29 November 2011, and *Erişen and Others v. Turkey*, no. 7067/06, § 52, 3 April 2012). The Court accepts that in such a system, the requirement to hold a hearing each time an objection is lodged could lead to a certain paralysis of the criminal proceedings (*Knebl v. the Czech Republic*, no. 20157/05, § 85, 28 October 2010). In the light of these considerations and taking into account the specific nature of the proceedings under Article 5 § 4, in particular the requirement of speed, the Court considers that it is not necessary for a hearing to be held in respect of each objection, unless there are exceptional circumstances (see *Altınok*, cited above, § 54); in that respect, it recalls that domestic courts dealing with requests of release during pre-trial detention must provide the "guarantees of a judicial procedure", so that the proceedings must be adversarial and must always ensure equality of arms between the parties -the prosecutor and the detainee.

32. In the present case, the Court observes that the applicant and his representative appeared before the trial court for each hearing on the merits of the case. The applicant was therefore able to orally submit his arguments against his continued detention. However, the applicant's subsequent objections were examined on the basis of the case file, without holding an oral hearing. Neither of the parties, namely the public prosecutor or the detained applicant, was invited to make any oral submissions before the appeal court. In that respect, the applicant was not put in a disadvantaged position vis-à-vis the prosecution. Furthermore, the Court also takes note of the fact that each time the assize courts examined the applicant's objection to his continued detention, his last appearance before the court went back a few days (see paragraph 10 above). In the circumstances of the present case, the Court considers that the holding of a hearing was not necessary when deciding on the objections of the applicant.

33. In view of the foregoing, the Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 5 § 5 of the Convention

34. The applicant complained under Article 5 § 5 of the Convention that he had not been provided with effective domestic remedies with regard to his complaints under Article 5 §§ 1 to 4 of the Convention.

35. The Court reiterates that paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of 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). The right to compensation set forth in paragraph 5 therefore 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. Accordingly, the Court cannot consider an applicant's claim based exclusively on Article 5 § 5 unless a breach of Article 5 §§ 1 to 4 has been established directly or in substance, either by the domestic authorities or by the Court itself.

36. It follows that as the applicant's case does not disclose such a breach, his claim under Article 5 § 5 should be rejected for being incompatible *ratione materiae* with the provisions of the Convention.

D. Complaint under Article 6 § 1 of the Convention

37. The applicant complained under Article 6 of the Convention that the length of proceedings had been excessive.

38. The Court notes that the impugned proceedings began on 6 June 2008 and ended on 6 October 2011, and therefore lasted for three years and four months before one level of jurisdiction.

39. The Court examined the reasonableness of that period in light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many others, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). It observes that the length of the proceedings in the instant case does not raise an issue under the Convention.

40. In the light of the foregoing, the Court finds that the complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

E. Remaining Complaints

41. As regards the applicant's remaining complaints under Articles 5 § 1, 6 § 1, 7 and 8 of the Convention, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols in the light of all the material in its possession, and in so far as the matters complained of are within its competence.

42. It follows that this part of the application should be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 December 2016.

Hasan Bakırcı
Deputy Registrar

Valeriu Griţco
President