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

SECOND SECTION

**CASE OF SOLMAZ v. TURKEY**

*(Application no. 27561/02)*

JUDGMENT

STRASBOURG

16 January 2007

**FINAL**

*16/04/2007*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Solmaz v. Turkey,**

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

Mr A.B. BAKA, *President*,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

# PROCEDURE

1. The case originated in an application (no. 27561/02) 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 Sami Solmaz ("the applicant"), on 17 June 2002.

2. The applicant was represented by Ms F.G. Yolcu, Ms G. Altay and Mr H. Karakuş, lawyers practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 29 June 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Ankara.

5. On 23 January 1994 the applicant was arrested and placed in police custody by officers from the Anti-Terrorist Branch of the Istanbul Security Headquarters, on suspicion of being involved in the activities of an illegal armed organisation, namely the TKP/ML (*Türkiye Komünist Partisi/Marksist Leninist*, Turkish Communist Party / Marxist Leninist).

6. On 7 February 1994 he was brought before the public prosecutor and then the investigating judge at the Istanbul State Security Court. The same day, the investigating judge remanded the applicant in custody.

7. On 31 March 1994 the public prosecutor filed an indictment charging the applicant and four others with membership of an illegal armed organisation and involvement in activities which undermined the constitutional order of the State.

8. At the time of the events, a similar case concerning certain activities of the TKP/ML was pending before the third chamber of the Istanbul State Security Court. Following a jurisdictional conflict between two chambers of the court, on 14 March 1995 the Court of Cassation decided to join the applicant's case to the one pending before the third chamber. Consequently, the number of accused was increased to sixteen people.

9. The applicant did not attend a number of hearings.

10. In the course of the proceedings, the court held forty-eight hearings. At the end of each hearing the State Security Court rejected the applicant's requests for release pending trial, having regard to the nature of the offence, the state of the evidence and the content of the case file.

11. On 12 June 2000 the Istanbul State Security Court convicted the applicant as charged and sentenced him to life imprisonment.

12. On 15 May 2001 the Court of Cassation quashed the decision for procedural reasons. The case was remitted to the Istanbul State Security Court for further examination and the applicant remained in detention. The case was resumed with 15 accused, including the applicant.

13. On 8 February 2002 the applicant's lawyer requested the court to release the applicant pending trial due to his poor health. He submitted a medical report certifying that Mr Solmaz was suffering from Wernicke-Korsakoff syndrome (a brain disorder caused by thiamine deficiency, usually associated with alcoholism). The court dismissed the lawyer's request, maintaining that the applicant could be treated in prison. Moreover, it held that, considering the nature of the offence, the state of the evidence and the content of the file, the applicant should continue to be detained pending trial.

14. Following an objection by the applicant's lawyer, the court reconsidered its decision of 8 February 2002. On 18 February 2002, relying on a medical report and considering the length of the period which the applicant had already spent in detention, the court ordered his release pending trial. It further held that it was likely that the final decision of the court would be in favour of the applicant.

15. State Security Courts were abolished by constitutional amendments introduced on 7 May 2004. Subsequently, the applicant's case was resumed before the Istanbul Assize Court.

16. After holding seventeen hearings, on 31 January 2005 the Istanbul Assize Court convicted the applicant and sentenced him to life imprisonment in accordance with Article 146 of the Criminal Code.

17. However, on an unknown date the Court of Cassation quashed the decision of the first-instance court once again. The case was resumed before the Istanbul Assize Court, where it is still pending.

### II. RELEVANT DOMESTIC LAW

18. Article 63 of the Criminal Code (Law no. 5237) provides:

> **“** Any term served due to circumstances which occurred before the judgment became final and which resulted in the restriction of personal liberty shall be deducted from the sentence. (...)”

## THE LAW

### I. ADMISSIBILITY

19. The Court notes that 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.

### II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

20. The applicant complained that his detention had exceeded the “reasonable time” requirement of Article 5 § 3, which reads, in so far as relevant, as follows:

**Article 5 § 3**

> “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.”

21. The Government maintained that the applicant's detention had been reviewed at regular intervals. However, in view of the seriousness of the charges against him and the evidence in the case file, the court had had to extend his detention pending trial.

22. The applicant argued that the length of his detention had been unreasonable. He further contended that the domestic court's decisions ordering his continued detention had not justified its excessive length.

## A. Period to be taken into consideration

### *1. Recapitulation of the relevant case-law*

23. The Court reiterates that the word "conviction", for the purposes of Article 5 § 1 (a), is to be understood as signifying both a finding of guilt, after it has been established in accordance with the law that an offence has been committed, and the imposition of a penalty or other measure involving a deprivation of liberty (see *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 19, § 35). The detention of a person convicted at first instance, whether or not he or she has been detained up to this moment, falls under Article 5 § 1 (a), which provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court; ..."

24. Thus, if an applicant has been detained pending trial under Article 5 § 3, that form of custody would end on the day on which the charge is determined, even if only by a court of first instance (see *Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, p. 23 § 9). The Court additionally observes that a person who had cause to complain of continued detention after conviction pending a delayed appeal may not be able to rely on Article 5 § 3 but could possibly allege a breach of the "reasonable time" requirement of Article 6 § 1 of the Convention (ibid.).

25. This general principle asserted in *Wemhoff* has been confirmed in *B. v. Austria* (judgment of 28 March 1990, Series A no. 175, p. 23, § 9). Given the essential link between paragraph 3 and sub-paragraph 1 (c) of Article 5, a person convicted at first instance and detained pending appeal cannot be considered to be detained for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence.

26. There exist important differences among the Contracting States on the question whether a person convicted at first instance has started serving a prison sentence while an appeal is still pending. However, the Court held in *B. v Austria* that the important guarantees of Article 5 § 3 of the Convention are not dependent on national legislation (ibid., § 39). Thus, even if the domestic law of a member State provides that a sentence only becomes final on completion of all appeals, detention comes to an end for the purposes of the Convention with the finding of guilt and the sentence imposed at first instance.

27. In *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p. 37, § 6), the applicant's initial period of detention ended more than six months before the date on which he lodged his application with the Commission. Therefore the Court considered that it could not examine

whether the first period was compatible with the Convention. However, it went on to say that, in the event of an applicant being convicted, the first period would normally be deducted from any term of imprisonment imposed; it would thus reduce the actual length of imprisonment which might be expected. The Court accordingly decided that the first period should be taken into account in assessing the reasonableness of the applicant's later detention (ibid.).

In doing so, it explained that it would be excessively formalistic to require an applicant complaining about the length of his or her detention in the same criminal proceedings to lodge a new application with the Convention organs after the end of each pre-trial detention period (see *Neumeister*, p. 38, § 7). Moreover, it observed that such a requirement would overburden the Convention system with multiple applications lodged by the same applicant with the same complaint concerning different yet consecutive detention periods (ibid.).

28. It can be inferred from the above explanations that the *Wemhoff* and *Neumeister* judgments (pronounced on the same day) complement each other, as the former determines when the relevant period under Article 5 § 3 ceases to apply, while the latter clarifies the application of the six-month rule under Article 35 § 1 of the Convention and the calculation of the total length of pre-trial detention periods.

29. The Court has followed the same approach in more recent judgments. It has held that where an accused person is detained for two or more separate periods pending trial, the "reasonable time" guarantee of Article 5 § 3 requires a global assessment of the accumulated periods (see *Kemmache v. France (no. 1 and no. 2)*, judgment of 27 November 1991, Series A no. 218, § 44; *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 98; *Vaccaro v. Italy*, no. 41852/98, §§ 31-33,16 November 2000; and *Mitev v. Bulgaria*, no. 40063/98, § 102, 22 December 2004). In these cases, unlike the *Neumeister* judgment, no reference was made to the application of the six-month rule.

30. However, until recently, the approach adopted in Turkish cases examined by the Court under Article 5 § 3 has been slightly different from that above. If an application was lodged more than six months after the end of initial periods of detention, the Court declared the complaints regarding these periods inadmissible. Nevertheless, when deciding on the reasonableness of the last period of detention, account was taken of the previous periods of detention to which the applicant had already been subjected (see, among others, *Kalay v. Turkey*, no. 16779/02, § 34, 22 September 2005; *Gıyasettin Altun v. Turkey*, no. 73038/01, § 28, 24 May 2005; *Çiçekler v. Turkey*, no. 14899/03, § 61, 22 December 2005; *Bahattin Şahin v. Turkey* (dec.), no. 29874/96, ECHR 17 October 2000, and *Köse v. Turkey* (dec.), no. 50177/99, ECHR 2 May 2006).

31. Again, in the recent *Baltacı v. Turkey* judgment (no. 495/02, §§ 44-46, 18 July 2006) the Court reinstated the global approach by making an assessment of the accumulated periods of detention, without mentioning the six-month rule.

32. From the above recapitulation of its case-law, the Court concludes that confusion has grown regarding the application of the six-month rule in cases of the present kind. It reiterates that this rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. It is therefore not open to the Court to set aside the application of the six-month rule solely because the Government concerned have not made a preliminary objection based on it (see *Walker v. United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

33. In the light of the above explanations, the Court wishes to clarify the application of the six-month rule in cases of multiple detention periods, for the purposes of Article 5 § 3 of the Convention, through its examination of the present case.

*2. The approach in the instant case*

34. The Court observes that, in the present case, the applicant's pre-trial detention began when he was arrested on 23 January 1994. He was detained for the purposes of Article 5 § 3 of the Convention until his conviction by the Istanbul State Security Court on 12 June 2000. From that date until 15 May 2001, when the Court of Cassation quashed the decision of the first-instance court, he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see *B. v Austria*, cited above, §§ 33-39, and *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). From 15 May 2001 until his release pending trial on 18 February 2002, the applicant was again in pre-trial detention for the purposes of Article 5 § 3 of the Convention.

35. The Court notes that, in the absence of domestic remedies, the six-month time-limit starts to run from the act being complained of. It nevertheless reaffirms and emphasises the *Neumeister* considerations cited above (see paragraph 27 above), in particular the need to avoid excessive formalism and the imposition of an excessive burden on not only the applicant but also the Convention supervisory mechanism (see *Neumeister*, cited above, p. 38, § 7). This is especially so in the circumstances of the present case where the criminal proceedings were pending at the appeal

stage and the applicant continued to be deprived of his liberty, albeit under Article 5 § 1 (a) of the Convention.

36. Consequently, the Court considers that, in the instant case, the multiple, consecutive detention periods of the applicant should be regarded as a whole, and the six-month period should only start to run from the end of the last period of pre-trial custody, namely 18 February 2002.

37. The Court further notes that, pursuant to Article 63 of the Criminal Code, any period of imprisonment served before a judgment depriving an individual of personal liberty becomes final shall be deducted from the sentence (see paragraph 18 above). In order to assess the reasonableness of the length of the applicant's pre-trial detention, the Court should therefore make a global evaluation of the accumulated periods of detention for the purposes of Article 5 § 3 of the Convention (see, *mutatis mutandis*, *Neumeister*, cited above, p. 37, § 6). Consequently, the Court concludes that, after deducting the periods when the applicant was detained after conviction for the purposes of Article 5 § 1 (a) of the Convention from the total time that he was deprived of his liberty, the period to be taken under consideration in the instant case is nearly seven years and two months.

## B. Reasonableness of the length of detention

### *1. Principles established under the Court's case-law*

38. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the need to respect individual liberty as guaranteed by Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], cited above, §§ 110-11).

39. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

40. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

*2. Application of the principles to the circumstances of the present case*

41. The Court observes that the Istanbul State Security Court examined the applicant's continued detention at the end of every hearing, either of its own motion or upon the applicant's request. It notes however, from the material in the case file, that the court ordered the applicant's continued detention using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of the evidence and the content of the file" at the end of most of the hearings. Although, in general, the expression "the state of evidence" may be a relevant factor for the existence and persistence of serious indications of guilt, in the present case it nevertheless, alone, cannot justify the length of the detention of which the applicant complains (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207; *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A; and *Demirel v. Turkey*, no. 39324/98, § 59, 28 January 2003).

42. In this context, the Court notes that the State Security Court failed to indicate to what extent the applicant's release would have posed a risk, after - by then - well over eight years of detention (including the periods of imprisonment after conviction), in its last decision to extend the applicant's detention pending his re-trial at first instance (see *Demirel*, cited above, § 60).

43. The foregoing considerations are sufficient to enable the Court to conclude that the grounds given for the applicant's pre-trial detention were not "sufficient" and "relevant" to justify holding him in custody for nearly seven years and two months. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

## III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings, which are still pending after more than twelve years. Article 6 § 1, in so far as relevant, provides:

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

46. The Government submitted that the case was complex, considering the charges against the applicant and the need to organise a large-scale trial involving sixteen defendants and numerous witnesses. They contended that these factors explained the length of the proceedings and that no negligence or delay could be imputed to the judicial authorities. They alleged that the applicant had contributed to the length of the proceedings by not appearing at a number of hearings. Furthermore, they maintained that his lawyer had failed to submit defence statements at five consecutive hearings.

47. The applicant contended that he could not appear at some of the hearings because of his illness. He maintained however that he could not be held responsible for the total length of the proceedings.

48. The Court observes that the proceedings began on 23 January 1994 with the applicant's arrest and are still pending before the Istanbul Assize Court. They have thus already lasted twelve years and eleven months for two levels of jurisdiction, which examined the case twice.

49. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to that in the present application (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Ertürk v. Turkey*, no. 15259/02, 12 April 2005).

50. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

51. There has accordingly been a breach of Article 6 § 1 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

53. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage and EUR 12,500 for non-pecuniary damage.

54. The Government disputed these claims.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage on account of the undue length of his pre-trial detention and the criminal proceedings, which cannot be sufficiently compensated by the finding of violations alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 10,000 under this head.

### B. Costs and expenses

56. By way of costs and expenses in relation to his representation, the applicant claimed 400 new Turkish liras (TRY) (EUR 200) in respect of communication and translation costs, and TRY 6,700 (EUR 3,350) for legal expenses. He submitted that this amount included the visiting and travel expenses of his lawyer, as well as the work relating to the proceedings before the Court in preparing the application and the observations on admissibility and merits. He claimed that his representative had applied the scale recommended by the Istanbul Bar for applications to the Court.

57. The Government contested the applicant's claim as being unsubstantiated by any documentation.

58. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant EUR 2,500 in respect of costs and expenses.

### C. Default interest

59. The Court considers it appropriate that the default interest 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 application admissible;

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

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points

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

Done in English, and notified in writing on 16 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| S. DOLLÉ | A.B. BAKA |
| Registrar | President |