



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

SECOND SECTION

CASE OF BAYRAM GÜÇLÜ v. TURKEY

(Application no. 31535/04)

JUDGMENT

STRASBOURG

18 February 2014

FINAL

18/05/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bayram Güçlü v. Turkey,

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

Guido Raimondi, *President*,

Işıl Karakaş,

Peer Lorenzen,

András Sajó,

Nebojša Vučinić,

Paulo Pinto de Albuquerque,

Egidijus Kūris, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 28 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 31535/04) 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 Bayram Güçlü (“the applicant”), on 23 June 2004.

2. The applicant was represented by Mr H. Dilek and Mr A. Sungurtekin, lawyers practising in Samsun. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and is currently serving a prison sentence in Samsun.

5. On 14 July 1999 the Istanbul State Security Court issued an order in respect of the applicant, *in absentia*, for him to be arrested on suspicion of trafficking illegal drugs. He was living in the Netherlands at the time. A few days later, an Amsterdam public prosecutor filed an indictment, accusing him of importing and trafficking illegal drugs.

6. On 21 July 1999 the public prosecutor at the Istanbul State Security Court requested that the applicant be extradited from the Netherlands in

order for criminal proceedings to be instigated against him for trafficking illegal drugs as part of a criminal organisation.

7. On 23 July 1999 the prosecutor filed an indictment with the Istanbul State Security Court, accusing the applicant of trafficking cocaine, pursuant to Article 403 of the former Criminal Code (Law no. 765). Meanwhile, criminal proceedings were brought against other members of the criminal organisation, of which the applicant was also accused of being a member.

8. On an unspecified date in 2000 the Amsterdam Criminal Court found the applicant guilty as charged, and sentenced him to a fixed term of imprisonment.

9. After serving thirty-three months of his sentence in the Netherlands, on 19 January 2002 the applicant was released and deported to Turkey by the Dutch authorities. He was arrested and remanded in police custody upon arrival.

10. On 21 January 2002 the applicant was interrogated by the police at the Narcotics Branch of the Istanbul Security Directorate, in the absence of a lawyer. According to a form explaining arrested persons' rights, which the applicant signed, he was informed of the charges against him and of his right to remain silent. It was also noted on the form that the applicant had waived his right to legal assistance.

11. On the same day the applicant was again questioned by the police, without being asked whether he wanted legal assistance. In the absence of a lawyer, he admitted some of the allegations made against him.

12. Later the same day the applicant was heard by the public prosecutor at the Istanbul State Security Court, still in the absence of a lawyer.

13. On 22 January 2002 the applicant was taken before the investigating judge at the Istanbul State Security Court, who remanded him in custody. Again in the absence of a lawyer, the applicant denied the statements he had given to the police and maintained that he had been compelled to sign them without having read them.

14. On 23 January 2002 the public prosecutor filed another indictment with the Istanbul State Security Court, accusing the applicant of trafficking heroin as part of a criminal organisation, pursuant to Article 403 of the former Criminal Code (Law no. 765).

15. In the meantime, the proceedings against the other members of the criminal organisation were concluded.

16. On 26 February 2003 the Istanbul State Security Court found the applicant guilty of trafficking cocaine and sentenced him to thirty-six years' imprisonment. The court held that there was no need to consider the heroin charge. In convicting the applicant, it relied on his statements, the statements made by the other members of the criminal organisation, which had been taken during the proceedings against them, and forensics reports on the drugs that had been seized. The court deducted the thirty-three

months the applicant had already served in the Netherlands from his total sentence.

17. On 6 November 2003 the Court of Cassation upheld the judgment of the first-instance court. That decision was deposited with the latter's registry on 9 January 2004.

II. RELEVANT DOMESTIC LAW

18. A description of the relevant domestic law may be found in the case of *Salduz v. Turkey* ([GC], no. 36391/02, §§ 27-31, ECHR 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant argued that he had been denied legal assistance during his time in police custody. He further submitted that the domestic court had relied on witness statements taken during a separate set of proceedings concerning other defendants, and had failed to provide him with an opportunity to have those people cross-examined.

The applicant relied on Article 6 §§ 1 and 3 (c) and (d) of the Convention, the relevant parts of which provide:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

A. Admissibility

20. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Right to legal assistance

21. The applicant claimed that he had been denied legal assistance during the preliminary investigation stage.

22. The Government contested that argument. They submitted that the applicant had waived his right to legal assistance before his interrogation by the police.

23. The Court notes that at the time the applicant was taken into police custody, in January 2002, the restriction imposed on his right of access to a lawyer, set forth in section 31 of Law no. 3842, was systemic and applied to anyone held in police custody in connection with an offence falling under the jurisdiction of the State Security Courts (see *Salduz*, cited above, §§ 56-63, and *Dayanan v. Turkey*, no. 7377/03, §§ 30-34, 13 October 2009).

24. In the present case, the applicant appears to have been informed of his right to legal assistance before his interrogation at the Narcotics Branch, where he was questioned by the police for the first time following his arrival in Turkey. Nevertheless, the Court observes that before he was placed in detention on remand, the applicant was questioned by the police a second time, as well as by the public prosecutor and the investigating judge, each time in the absence of a lawyer and without having been informed of his right to appoint one.

25. Notwithstanding the applicant's waiver of his right to legal assistance during the initial police interrogation (see paragraph 10 above), the Court notes that the applicant's right to legal assistance was restricted pursuant to section 31 of Law no. 3842 during the rest of his time in police custody. Consequently, it finds no particular circumstances which would require it to depart from its findings in the aforementioned *Salduz* judgment.

26. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case.

2. Other complaints under Article 6 of the Convention

27. Having regard to its findings above and referring to paragraph 36 below, the Court, without taking a position on the remaining complaint raised by the applicant regarding the fairness of the proceedings, considers that it is unnecessary to examine it (see *Geçgel and Çelik v. Turkey*, nos. 8747/02 and 34509/03, § 16, 13 October 2009; *Hikmet Yılmaz v. Turkey*, no. 11022/05, § 24, 4 June 2013; and *Fazlı Kaya v. Turkey*, no. 24820/05, § 27, 17 September 2013).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant complained under Article 3 of the Convention that he had been subjected to psychological duress during his time in police custody, in that he had been compelled to give his statements without a lawyer being present.

29. Relying on Article 5 of the Convention, the applicant maintained that he had not been duly informed of the reasons for his arrest and that he had been prevented from consulting a lawyer.

30. Lastly, he claimed under Article 4 of Protocol No. 7 to the Convention that the Istanbul State Security Court had failed to take into account the judgment of the Amsterdam Criminal Court despite his requests, and that it had not deducted the thirty-three months he had already served in the Netherlands from his sentence.

31. An examination by the Court of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. The applicant claimed 150,000 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage. He did not submit any claim for costs and expenses.

33. The Government contested these claims, considering the requested amounts excessive.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered some non-pecuniary damage and therefore, taking into account the circumstances of the present case, and ruling on an equitable basis, it awards him EUR 1,500 in respect of non-pecuniary damage.

35. The Court further considers that the most appropriate form of redress would be a retrial of the applicant in accordance with the requirements of Article 6 of the Convention, should he so request (see *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

36. 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 under Article 6 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1, on account of the lack of legal assistance afforded to the applicant while in police custody;
3. *Holds* that there is no need to examine the remaining complaint raised under Article 6 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, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President