



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

SECOND SECTION

CASE OF AKGÖL AND GÖL v. TURKEY

(Applications nos. 28495/06 and 28516/06)

JUDGMENT

STRASBOURG

17 May 2011

FINAL

17/08/2011

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

In the case of Akgöl and Göl v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

David Thór Björgvinsson,

Giorgio Malinverni,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 12 April 2011,

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

PROCEDURE

1. The case originated in two applications (nos. 28495/06 and 28516/06) 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 two Turkish nationals, Mr Ali Akgöl and Mr Hakan Göl, on 30 June 2006.

2. The applicants were represented by Mr Aydın Erdoğan, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that their right to freedom of assembly had been breached on account of the intervention of security forces in a demonstration in which they were taking part.

4. On 28 January 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1980 and 1979 and live in Hatay and Urfa respectively.

6. On 3 May 1998 Kenan Mak, a student at the Abant İzzet Baysal University in Bolu (“the university”), was killed in an attack. Thereafter, on

3 May of every subsequent year students at the university have held a meeting to mark the anniversary of the killing.

7. On 3 May 2002 the two applicants were studying at the university when they attended the remembrance meeting. The day before the meeting the chancellor of the university had indicated his approval of the meeting taking place in the canteen of the university.

8. According to a report drawn up by gendarmes who were responsible for the security of the university, seventy to eighty “left wing students” wearing photographs of Kenan Mak gathered in the university’s canteen on 3 May 2002. The students then proceeded to the university’s garden where they were met by the gendarme Captain, F.Y. Captain Y. told the students that their gathering was in breach of the Meetings and Demonstration Marches Act (Law no. 2911) because they were not holding it in the designated place, namely the canteen. He asked the students to disperse, and warned that “otherwise force would be used” to disperse them. Instead, the students displayed a banner stating “down with fascism, Kenan Mak is immortal” and chanted slogans such as “shoulder to shoulder against fascism”. The students then started walking towards the chancellor’s offices. The gendarmes present in the vicinity used force and dispersed the students. The applicants and seven other students were arrested by the gendarmes. During the scuffle Captain Y.’s little finger and a gendarme’s leg were injured by the students.

9. The applicants were questioned the same day by gendarme officers, and stated that they were aware that prior permission had been sought and granted for the meeting.

10. The same day the applicants were examined by a doctor. The applicants did not complain about any ill-treatment and the doctor did not observe any injuries on their bodies. They were then sent to the prosecutor’s office where their release was ordered.

11. The gendarme whose leg was injured during the incident informed the prosecutor on 28 May 2002 that the name of the student who injured him was C.G.

12. On 5 July 2002 the Bolu prosecutor filed an indictment with the Bolu Criminal Court of First Instance (hereinafter the “trial court”), and accused the applicants and the remaining seven students of “breaching Law no. 2911”. The prosecutor also stated in his indictment that the applicants and C.G. had punched and kicked the gendarme captain and the gendarme.

13. In the course of the criminal proceedings the applicants rejected the allegations of the use of force by them, but accepted that they had taken part in the demonstration. Captain Y. was not heard by the trial court, but was questioned by a court in another city, pursuant to a letter rogatory sent to that court by the trial court.

14. On 6 May 2003 the trial court, on the basis of statements given by eyewitnesses, gendarmes, as well as “video footage of the incident”,

convicted the applicants of having taken part in an illegal demonstration and of having used force when the gathering was being dispersed by the gendarmes, in breach of section 32 § 3 of Law no. 2911. According to the judgment, in addition to Captain Y. and the gendarme mentioned above, four other gendarmes had also apparently been injured by the applicants and their fellow student C.G. The applicants were sentenced to two years and six months' imprisonment.

15. The applicants appealed against the judgment, and argued that there had been insufficient evidence to warrant their conviction and that they had not been given the opportunity to examine the video footage. In their appeals the applicants referred to their constitutional right to take part in, *inter alia*, peaceful demonstrations. Finally, the applicants drew the Court of Cassation's attention to the fact that similar gatherings had been organised in the past to commemorate Kenan Mak's death and that there had never been any problems caused by those gatherings.

16. On 9 March 2006 the Court of Cassation upheld the judgment of the first-instance court in respect of the applicants.

17. The applicants asked the prosecutor at the Court of Cassation to apply to that court for rectification of the decision of 9 March 2006. In their letter to the prosecutor the applicants also pointed out that none of the injured gendarmes had accused them of inflicting their injuries.

18. The prosecutor accepted the applicants' request and on 31 July 2006 applied to the Court of Cassation's president for rectification of the decision. In his application the prosecutor noted that none of the injured gendarmes had named the applicants as the persons responsible for their injuries. The prosecutor referred to Article 11 of the Convention and argued that university grounds could not be regarded as public places within the meaning of Law no. 2911 and that the applicants' and their fellow students' actions could not therefore be regarded to be in breach of that Law. The students' failure to hold their meeting in a place other than the one for which permission had been granted could only be regarded as a disciplinary issue and dealt with by the university administration and not by courts of law.

19. The prosecutor also noted that the disturbance in the demonstration had been caused by the gendarmes' intervention. Moreover, the reports drawn up by the gendarmes who had taken part in the operation (see paragraph 8 above) had not made any mention of physical resistance by the students. The trial court had not examined the video footage and had not asked the injured gendarmes to identify the persons responsible for their injuries. As such, the trial court's decision to convict the applicants under section 32 § 3 of the Law no. 2911 had not been in accordance with applicable law and procedure.

20. In its decision of 10 October 2006 the Grand Chamber of the Court of Cassation's Criminal Division observed that the transcripts of one of the

hearings held by the trial court did not bear the signature of the court's clerk, and quashed the decision convicting the applicants. It deemed it unnecessary to examine the points raised by the prosecutor.

21. A retrial began before the trial court, which rendered its decision on 24 October 2007. Having examined the video footage, the trial court observed that eleven and a half minutes had elapsed between the beginning of the gathering and its dispersal by the gendarmes. It also noted that neither the applicants nor any of the other participants in the demonstration had used force against the gendarmes. Nevertheless, the trial court considered that the applicants and the other students had taken part in an unauthorised meeting and had thus acted in breach of section 32 §1 of Law no. 2911. According to the trial court, the gathering had been unlawful because it had not been organised in the canteen but rather had taken place outside. The applicants were sentenced to one year and three months' imprisonment, but the sentence was suspended.

22. The applicants appealed. The appeal proceedings are still pending before the Court of Cassation.

23. In the meantime, on account of his participation in the demonstration, on 9 December 2002 the university imposed a disciplinary sanction on the first applicant Ali Akgöl, and expelled him from the university for two semesters. As the university's decision was not quashed by the administrative courts until 2004, the decision was enforced and the applicant's graduation from the university was thus delayed for one year.

24. Also in the meantime, the first applicant completed his studies and started working as a teacher. Nevertheless, on 22 August 2006 the Ministry of Education dismissed him from his post on account of his attendance at the demonstration. He was reinstated in his post in July 2007, following the quashing of his conviction by the Court of Cassation (see paragraph 20 above).

II. RELEVANT DOMESTIC LAW

25. At the material time section 10 of the Meetings and Demonstration Marches Act (Law no. 2911) was worded as follows:

"In order for a meeting to take place, the governor's office or authorities of the district in which the demonstration is planned must be informed, during opening hours and at least seventy-two hours prior to the meeting, by a notice containing the signature of all the members of the organising board..."

26. Section 22 of the same Act prohibits demonstrations and processions on public streets, in parks, places of worship and buildings in which public services are based. Demonstrations organised in public squares must comply with security instructions and not disrupt individuals' movement or public transport. Finally, section 24 provides that demonstrations and processions which do not comply with the provisions of this law will be

dispersed by force on the order of the governor's office and after the demonstrators have been warned.

27. Section 32 of the Act, in so far as relevant, provided as follows:

“1. Unarmed persons taking part in an unlawful meeting or procession who, instead of dispersing of their own motion after having been warned or ordered to do so and who thus have to be forcefully dispersed by government forces, are liable to be sentenced to a term of imprisonment of between one and three years.

...

2. Unless their action breaches another criminal law provision which stipulates a more severe punishment, persons who resort to violence or making threats while being dispersed, or who resist the attempts to disperse them, are liable to be sentenced to a term of imprisonment of between three and five years.

...”

THE LAW

28. Given the similarity of the applications, as regards both fact and law, the Court deems it appropriate to join them.

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

29. The applicants maintained under Articles 10 and 11 of the Convention that the gendarmes' intervention in the demonstration had infringed their freedom of thought and expression and their right to peaceful assembly.

30. The Court considers that the applicants' complaints should be examined from the standpoint of Article 11 of the Convention alone, which reads in so far as relevant as follows:

“1. Everyone has the right to freedom of peaceful assembly ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of ...public safety [and] for the prevention of disorder or crime...”

31. The Government contested that argument.

A. Admissibility

32. The Government argued that the applicants had failed to comply with the requirement to exhaust domestic remedies because the proceedings at national level were still continuing.

33. The Court observes that the proceedings referred to by the Government, namely the criminal proceedings brought against the applicants by public prosecutors for an alleged breach of the provisions of the Meetings and Demonstration Marches Act, have now been pending for over eight years. The Court also observes that, in the course of these proceedings, which stop the running of the six-month period (see *Ersoy v. Turkey*, no. 43279/04, § 38, 28 July 2009, and *Aşıcı and others v. Turkey*, no. 17561/04, 15 June 2010, § 24), the applicants invoked the substance of their rights under Article 11 of the Convention by referring to their constitutional right to take part in peaceful demonstrations (see paragraph 15 above). In light of the above, and having particular regard to the excessive time it is taking the national courts to conclude the case, the Court does not consider it necessary for the applicants to wait for the conclusion of the proceedings. It follows that the Government's objection in this connection must be dismissed.

34. The Court notes that this complaint 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.

B. Merits

35. The Government maintained that the applicants had not been deprived of their rights under Article 11 of the Convention.

36. The Court considers that the gendarmes' intervention, the subsequent arrest of the applicants for participating in the demonstration, and the prolonged criminal proceedings against the applicants constitute an interference with the applicants' rights under Article 11 of the Convention.

37. As pointed out above, the criminal proceedings against the applicants are still pending in Turkey. Nevertheless, having regard to the length of time those proceedings have already taken, the Court does not deem it necessary to wait for their conclusion before examining the merits of the applicants' complaints under Article 11 of the Convention. To that end the Court notes, firstly, that even if the applicants are acquitted at the end of the criminal proceedings, such an acquittal would not alter the fact that there has already been an interference with the applicants' rights under Article 11 of the Convention on account of the gendarmes' intervention in the meeting and the applicants' subsequent arrest (see paragraph 36 above).

38. Although the Government did not seek to argue that the interference had a legal basis and that it had a legitimate aim, the Court notes that the legal basis for the interference was section 32 of the Meetings and Demonstration Marches Act, and the interference was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. As regards a legitimate aim, the Court is prepared to accept that the interference pursued the legitimate aims of preventing disorder or protecting public safety.

39. Turning to the question of whether the interference was “necessary in a democratic society”, the Court refers to the fundamental principles underlying its judgments relating to Article 11 of the Convention (see, in particular, *Oya Ataman v. Turkey*, no. 74552/01, §§ 35-37, ECHR 2006-XIII and the judgments cited therein).

40. An aspect of the incident which is crucial for the Court’s examination has already been established by the national authorities; on the basis of the video footage of the demonstration, the domestic courts have already established that the gathering had been a peaceful one and that neither the applicants nor any other student had resorted to any acts of violence in the course of the demonstration (see paragraph 21 above).

41. The proceedings which are still being conducted concern only the question of whether or not the applicants took part in an unlawful demonstration. The Court notes that, according to Law no. 2911, a meeting will be unlawful if prior notice of it has not been given to the relevant authorities (see paragraph 25 above). In this connection, the Court reiterates that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility. Therefore, in order to enable the domestic authorities to take the necessary preventive security measures, associations and others organising demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force. Nevertheless, it also points out that an unlawful situation does not justify an infringement of freedom of assembly and that regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (*Samüt Karabulut v. Turkey*, no. 16999/04, § 35, 27 January 2009 and the cases cited therein).

42. In the instant case, the Court observes that the group in question concerned around seventy to eighty people. It appears that they were carrying banners and chanting slogans to protest against the killing of their fellow student. In this connection, the Government gave no particular reasons, such as the specificities of the location of the demonstration, to show that this group represented a danger to public order or public safety. Having particular regard to the fact that the gathering took place on the grounds of a university, and without taking a position on the application of Law. no. 2911 to university premises, the Court finds no such evidence of its own motion.

43. Moreover, the Court reiterates that, where demonstrators do not engage in acts of violence, as was the case in the present application, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 46, 18 December 2007). The Court is concerned by the fact that the applicants were prosecuted - and convicted at first instance - on account of the mere fact of their participation in an unauthorised but peaceful demonstration. It considers that a peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction.

44. The Court also observes that the dispersal was quite prompt. According to the video footage, the demonstration lasted just over eleven minutes. Consequently, it is not satisfied that the applicants had sufficient time – together with their fellow demonstrators – to manifest their views (see *Oya Ataman*, cited above, §§ 41-42).

45. Accordingly, the Court considers that in the instant case the interference with the applicants' rights under Article 11 of the Convention was disproportionate and was not necessary for preventing disorder within the meaning of the second paragraph of that provision.

46. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

47. The applicants complained under Article 6 of the Convention that they had been denied a fair hearing. In this connection, they claimed that the domestic courts had failed to take into account the evidence in their favour and had relied solely on the incident report. They further criticised the fact that they had been denied the opportunity to ask Captain Y. questions because he had been heard by a judge of another court pursuant to a letter rogatory.

48. The Government contested that argument.

49. The Court notes that the criminal proceedings against the applicants are still pending before the Court of Cassation. It is therefore unable to examine the entire criminal proceedings in order to express an opinion as to whether they comply with the requirements of Article 6 of the Convention. Accordingly, the introduction of the above complaints appears to be premature given the current state of the proceedings (see *İzmirli v. Turkey*, no. 30316/02, §§ 33-34, 26 June 2007).

50. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The first applicant (Ali Akgöl) claimed 9,450 euros (EUR) in respect of pecuniary, and EUR 15,000 in respect of non-pecuniary damage. In support of his claims he referred to his delayed graduation from the university and his removal from his teaching post for a period of nine months (see paragraphs 23 and 24 above).

53. The second applicant (Hakan Göl) claimed EUR 10,000 in respect of non-pecuniary damage.

54. The Government considered that there was no causal link between the applicants' alleged losses and a possible violation of the Convention. They also argued that the claims were speculative, excessive and unsubstantiated with any documentary evidence.

55. As for the claims made by the first applicant in respect of pecuniary damage, the Court notes that the first applicant has not substantiated his claim with adequate documentation or information. It therefore rejects this claim. On the other hand, the Court considers that the two disciplinary actions brought against this applicant, which had the effect of delaying his graduation from the university by one year and removing him from his teaching post for a period of nine months, must have exacerbated his frustration and distress. Thus, ruling on an equitable basis, the Court awards the first applicant EUR 12,000 in respect of non-pecuniary damage.

56. Also ruling on an equitable basis, the Court awards the second applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. Each applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court. No documentary evidence was submitted by the applicants in support of their claims.

58. The Government asked the Court to dismiss the applicants' claims for costs and expenses.

59. According to the Court's case-law, an applicant is entitled to 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, the applicants have not substantiated that

they have actually incurred the costs claimed. In particular, they failed to submit documentary evidence, such as a contract, a fee agreement or a breakdown of the hours spent by their lawyer on the case. Accordingly, the Court makes no award in respect of their lawyer's fees.

C. Default interest

60. The Court considers it appropriate that 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the applicants' right to freedom of assembly admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 11 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, 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:
 - (i) EUR 12,000 (twelve thousand euros) to the first applicant, Ali Akgöl, and
 - (ii) EUR 9,000 (nine thousand euros) to the second applicant, Hakan Göl;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President