



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

SECOND SECTION

CASE OF BAYAV v. TURKEY

(Application no. 45140/05)

JUDGMENT

STRASBOURG

22 November 2011

FINAL

22/02/2012

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

In the case of Bayav v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 45140/05) 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, Ms Sakine Bayav and Ms Zehra Bayav (“the applicants”), on 21 November 2005.

2. The applicants were represented by Mr V. Özkan, a lawyer practising in Adana. The Turkish Government (“the Government”) were represented by their Agent.

3. On 4 November 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 application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1979 and 1974 respectively and live in Adana.

5. On 17 January 2002 the applicants were placed in detention on remand on suspicion of aiding an illegal organisation, namely the PKK (the Workers’ Party of Kurdistan). On 22 January 2002 the public prosecutor filed an indictment against the applicants before the Adana State Security Court.

6. On 22 March 2002 the applicants were released pending trial. Subsequently, on 22 May 2003 the Adana State Security Court acquitted them of all charges.

7. On 11 August 2003 the applicants applied to the Adana Assize Court, seeking compensation for both pecuniary and non-pecuniary damage pursuant to Law no. 466, pertaining to the payment of compensation to persons unlawfully arrested or detained.

8. On 11 December 2003 the judge rapporteur at the Adana Assize Court heard both applicants, who indicated that they had been deprived of their income as a result of the unlawful detention.

9. On 30 November and 1 December 2004, respectively, the Adana Assize Court awarded each applicant 783,050,956 Turkish liras (TRL) (approximately 443 euros at the time). The Court of Cassation upheld those judgments on 19 April and 2 May 2005, respectively. The final decisions were served on the applicants on 7 June and 20 July 2005 respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The relevant domestic law and practice in force at the material time are outlined in the *Göç v. Turkey* judgment ([GC], no. 36590/97, §§ 27-32, ECHR 2002-V).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

11. The applicants complained under Article 6 § 1 of the Convention that they had not had an oral hearing before the Adana Assize Court for the determination of their compensation claims. They further claimed under the same provision that the proceedings did not comply with the “reasonable time” requirement and that the amount of compensation awarded to them had been too low.

A. Absence of an oral hearing in domestic proceedings

1. Admissibility

12. The Government submitted that the application was introduced out of time as the six-month period had started running from the date when the final decisions had been served on the applicants. They contended therefore

that the applicants should have lodged their case with the Court before 19 October and 2 November 2005, respectively.

13. The Court notes that the dates indicated by the Government actually correspond to six months after the dates when the Court of Cassation delivered its decisions. It observes that the said decisions were served on the applicants on 7 June and 20 July 2005, respectively, that is less than six months before they brought the application before the Court. It therefore rejects the Government's preliminary objection.

14. The Court notes that this complaint 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.

2. Merits

15. The Government maintained that a hearing was held before the Adana Assize Court for each of the applicants and that they had had a fair and public trial.

16. The Court reiterates that in the *Göç v Turkey* judgment a similar situation to the present case was examined ([GC], no. 36590/97, §§ 43-52, ECHR 2002-V). In considering whether there were any exceptional circumstances which justified dispensing with an oral hearing on the applicant's compensation claim, the Court held that the applicant should have been afforded an opportunity to explain orally to the first-instance court the moral damage which his detention had entailed for him in terms of distress and anxiety. According to the Court, the administration of justice and the accountability of the State would have been better served by affording the applicant the right to explain his personal situation at a hearing before the domestic court subject to public scrutiny. The Court concluded that the above factor outweighed the considerations of speed and efficiency on which, according to the Government, Law no. 466 was based.

17. The Court notes that in the instant case the applicants were afforded the right to explain their personal situation orally before the judge rapporteur at the Adana Assize Court. However, it also observes that on each occasion they were heard by the judge rapporteur alone, in the absence of the other two judges, the public prosecutor and the defendant party. The Court concludes therefore that the circumstances in which the applicants were heard in the instant case did not afford them the right "to explain their personal situation in a hearing before the domestic court subject to public scrutiny" as required in the *Göç* judgment (see *Göç v. Turkey*, cited above, and *Şahin Karakoç v. Turkey*, no. 19462/04, §§ 35-41, 29 April 2008).

18. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention in respect of the applicants' complaints concerning the lack of a hearing.

B. Fairness and length of proceedings

19. The applicants argued that the proceedings before the Adana Assize Court had lasted for an unreasonably long period of time and that the amount of compensation awarded to them was insufficient.

20. As for the complaint concerning the length of proceedings, the Court notes that the two sets of proceedings in question began on 11 August 2003 and ended on 19 April and 2 May 2005, respectively, having thus lasted for a period of one year and eight months.

21. The Court will examine the reasonableness of that period in the 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). The Court observes that the cases in question were of a certain complexity as the determination of the claim required expert evidence and that they were examined before two levels of jurisdiction. It concludes therefore that the length of the proceedings in the instant case does not raise an issue under the Convention.

22. In so far as the applicants complained about the outcome of the proceedings, the Court reiterates that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, among many others, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B).

23. In the present case, it is observed that the national court decisions were based on the domestic law and the particular circumstances of the case. The Court finds no element which might lead it to conclude that the domestic courts acted in an arbitrary or unreasonable manner in their assessment. There is therefore no appearance of a violation of Article 6 § 1 in this respect.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicants complained under Article 5 of the Convention about the unlawfulness and the length of their pre-trial detention.

26. The Government argued that the applicants had failed to exhaust the domestic remedies in that they had not complained about the length of their pre-trial detention during the criminal proceedings against them. The Court

will not examine the preliminary objection as it finds in any case that the impugned detention ended on 22 March 2002 with the applicants' release pending trial and that the complaints under this provision were introduced outside the six-month period.

27. In so far as the applicants argued under Articles 9 and 10 of the Convention that their freedom of thought and expression had been violated as a result of the criminal proceedings brought against them, the Court observes that the proceedings in question ended with the judgment of the Adana State Security on 22 May 2003, more than six months before the applicants lodged an application with the Court. In any event, they cannot claim to be the victims of a violation of their rights under Articles 9 and 10, as they were acquitted of all charges against them by the above-mentioned judgment.

28. Consequently, the Court holds that these complaints are inadmissible for non-compliance with the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Each of the applicants claimed 30,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage. They also requested EUR 8,830 for the costs and expenses incurred before the Court.

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

31. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As for the alleged non-pecuniary damage, the Court considers that it is sufficiently compensated by the finding of a violation of Article 6 § 1 in paragraph 11 above (see *Şahin Karakoç v. Turkey*, no. 19462/04, § 67, 29 April 2008, and *Şentürk v. Turkey*, no. 27577/04, § 29, 24 November 2009).

32. As for the costs and expenses, the Court reiterates that according to its case-law, an applicant is entitled to the 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 (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). 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 bills, receipts, a contract, a fee agreement or a breakdown of the hours spent by their lawyer on the case. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of a public hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President