



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

THIRD SECTION

CASE OF ÖZATA v. TURKEY

(Application no. 19578/02)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

15/02/2006

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 Özata v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Ms R. JAEGER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 19578/02) 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, Ms Zahide Songül Özata (“the applicant”), on 15 April 2002.

2. The applicant was represented by Mr M.N. Terzi, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 3 June 2004 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaint concerning the lack of an oral hearing, non-communication to the applicant of the observations of the Public Prosecutor before the Antalya Assize Court and the Chief Public Prosecutor before the Court of Cassation, length of compensation proceedings and non-payment of the compensation that was awarded by the court. 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.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Ankara.

6. The applicant was arrested in Antalya on 21 November 1995 by the police officers from the Prevention of Terrorism Department of the Antalya Security Directorate, on suspicion of being a member of the PKK. She was kept in police custody until 29 November 1995.

7. In the evening of 29 November 1995, right after her release from police custody, the applicant went to a private hospital to be treated. According to the medical reports dated 30 November 1995 and 1 December 1995, drafted by the doctors who were involved in her treatment, the applicant stayed in the hospital for three days as she was suffering from hyper-tension. Moreover, it was also noted that she was diagnosed with neurotic anxiety. It was suggested for her to rest for three more days.

8. On 25 December 1995 the İzmir Public Prosecutor at the State Security Court dropped the charges against the applicant, on the ground of lack of evidence.

9. On 13 February 1996, invoking Articles 1 § 6 and 2 § 1 of the Law No. 466, the applicant brought an action before the Antalya Assize Court against the Treasury, requesting compensation for her unlawful arrest and detention which lasted eight days. She claimed 500,000,000 Turkish Liras (TRL) to compensate for her non-pecuniary damages and 11.820,000 TRL for her hospital expenses.

10. On 19 July 1996, after consulting the written opinion of the Public Prosecutor, the Antalya Assize Court held that the applicant be awarded compensation for her hospital expenses and 30,000,000 TRL for her non-pecuniary damages, calculated on the basis of her personal, financial and social status.

11. The applicant and the treasury both appealed against the award. The applicant contended on appeal that the amount of compensation was insufficient for her wrongful arrest and detention. The Treasury considered that the amount awarded was excessive.

12. On 19 March 1997 the Principal Public Prosecutor submitted his opinion on the merits of both parties' appeals. He advised the court to quash the first-instance judgment. He held that the expenses incurred in a private hospital should not be reimbursed. Moreover, in view of the relevant case law, he considered the compensation awarded for non-pecuniary damages to be excessive.

13. On 27 May 1997 the Court of Cassation quashed the judgment on the ground that the Assize Court rendered its decision without first

establishing whether the applicant's hyper-tension was caused by her detention in police custody.

14. On 4 July 1997 the court decided to obtain medical opinion concerning the cause of applicant's illness. Moreover, the Public Prosecutor was asked for his written observations on the applicant's claim.

15. Two medical reports, dated 27 October 1997 and 3 December 1997 and drafted by the doctors who treated the applicant, were submitted with the Antalya Assize Court. They confirmed the fact that the applicant was hospitalised in November 1995 for three days and that she was diagnosed with hyper-tension and neurotic anxiety which were aggravated due to the detention conditions.

16. On 13 January 1998 the court questioned the two doctors who were responsible for the applicant's treatment. The doctors confirmed that both the hyper-tension and the neurotic anxiety were health problems of which the applicant must have suffered well before her detention period. However, they also confirmed the aggravating effect of the detention conditions on these illnesses. The court requested the Forensic Department at the Ministry of Justice to examine the case file and submit its comments.

17. On 27 April 1998 the third specialization committee of the Forensic Department concluded that they were unable to determine for certain whether the hyper-tension and the neurotic anxiety were the applicant's existing health problems prior to her detention in police custody. It therefore referred the case file to a different committee of the Forensic Department.

18. According to the fourth specialization committee's report of 20 December 1999, which was submitted to the court on 27 March 2000, both the hyper-tension and the neurotic anxiety were not caused by detention conditions.

19. On 8 June 2000, in view of the report dated 20 December 1999, the Antalya Assize Court held that the applicant be awarded only compensation for non-pecuniary damages. In light of the facts of the case and having considered the applicant's financial and social status, as well as the intensity of her emotional suffering, the court awarded the applicant 30,000,000 TRL by way of compensation for her non-pecuniary damages.

20. On 28 June 2000 the applicant appealed against the judgment, claiming that she must have been awarded both pecuniary and non-pecuniary damages together with the interest. She further requested the Court of Cassation to hold a hearing.

21. In his written submissions of 30 November 2000 the Principal Public Prosecutor at the Court of Cassation recommended to the court to dismiss the applicant's claims as well as her request for a hearing. It argued that the applicant's case did not concern a criminal issue which would require holding a hearing at the appeal level. The public prosecutor, nevertheless, advised the court to quash the decision of the Assize Court for procedural reasons.

22. On 12 December 2000 the Court of Cassation followed the opinion of the Principal Public Prosecutor and quashed the decision of the Antalya Assize Court.

23. On 2 January 2001 the case was resumed before the Antalya Assize Court. The Public Prosecutor advised the court to reject the applicant's claim for pecuniary damages and grant her compensation for her non-pecuniary damages.

24. On 30 May 2001 the Assize Court awarded the applicant 30,000,000 TRL of non-pecuniary damages together with interest.

25. On 30 July 2001, reiterating her previous reasons, the applicant appealed against the judgment. On 28 November 2001 the Principal Public Prosecutor at the Court of Cassation recommended to the court to uphold the decision of the criminal court.

26. On 24 December 2001 the Court of Cassation, having regard, *inter alia*, to the opinion of the Principal Public Prosecutor, upheld the judgment of 30 May 2001.

27. According to information submitted by the Government, the applicant never applied to obtain the compensation awarded to her by the Antalya Assize Court.

II. RELEVANT DOMESTIC LAW

28. A description of the relevant domestic law at the material time can be found in *Göç v. Turkey* ([GC], no. 36590/97, §§ 27-34, ECHR 2002-V).

THE LAW

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

29. The applicant maintained that her right to a fair and public hearing was breached on two counts: firstly, she was never afforded an oral hearing in the determination of her compensation claim; secondly, she was never given an opportunity to reply to the Public Prosecutor's written opinion submitted to the Antalya Assize Court and to the written opinion of the Principal Public Prosecutor submitted to the Court of Cassation on the merits of her appeal.

Furthermore, the applicant complained that her compensation proceedings were not concluded within a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

Article 6 § 1 provides as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ...”

30. The Government contested that argument.

A. Admissibility

31. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Absence of an oral hearing in the domestic proceedings

32. The applicant alleged that she should have been given the opportunity to state to the judicial authorities the suffering that she had to go through during her unlawful detention in police custody. Additionally she contended that, as her claim was dismissed on account of the findings in the Forensic Department's report, she should have been able to put questions to the doctors who had drafted it.

She further argued that the amount of compensation awarded for her non-pecuniary damages was far from being satisfactory, let alone leading to unjust enrichment, as maintained by the Government.

33. The Government asserted that in accordance with Article 3 of the Law no. 466, the domestic court decides the case on the file, without holding a hearing. They contended that although the applicant's case fell within the jurisdiction of the Assize Court, it was not a criminal case. Therefore her claim could have been dealt with expeditiously on the basis of the case file alone. They argued that the Assize Court dismissed the applicant's claim for pecuniary damages, relying on the medical reports which confirmed that her illness pre-dated the detention period. Moreover, the compensation awarded for non-pecuniary damages was appropriate, considering that a higher amount would have led to unjust enrichment.

The Government additionally maintained that the case file was at the parties' disposal throughout the proceedings. Thus the applicant could have taken a copy of the documents therein and submitted her written comments.

34. According to the Court's established case-law, in proceedings before a court of first and only instance the right to a “public hearing” in the sense of Article 6 § 1 entails an entitlement to an “oral hearing” unless there are exceptional circumstances that justify dispensing with such a hearing (see,

among others, *Allan Jacobsson v. Sweden (no. 2)*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 168, § 46).

35. The Court observes that the applicant's claim was examined by the Antalya Assize Court and then on appeal by the Court of Cassation three times. At no stage was she afforded an opportunity to state her case orally before the domestic courts.

36. While it is true that the fact of the applicant's detention and the length of that detention as well as her financial and social status could be established on the case file and without the need to hear the applicant different considerations must apply to assessment of the emotional suffering which the applicant alleged she endured. In the Court's opinion, the applicant should have been afforded an opportunity to explain orally to the Antalya Assize Court the moral damage which her detention entailed for her in terms of distress and anxiety. The essentially personal nature of the applicant's experience, and the determination of the appropriate level of compensation, required that she be heard. It cannot be said that these matters are technical in nature and could have been dealt with properly on the basis of the case file alone. On the contrary, the Court considers that the administration of justice and the accountability of the State would have been better served in the applicant's case by affording her the right to explain her personal situation in a hearing before the domestic court subject to public scrutiny (*Göç*, cited above, § 51).

37. The Court, therefore, considers that there were no exceptional circumstances that could justify dispensing with an oral hearing and accordingly Article 6 § 1 of the Convention has been breached.

2. Non-communication of the public prosecutors' written opinions submitted to the Antalya Assize Court and to the Court of Cassation

38. The applicant contended that she was not informed of the written submission of the public prosecutor submitted to the Antalya Assize Court as well as the opinion the principal public prosecutor submitted to the Court of Cassation. She therefore argued that she did not have the opportunity to respond to the prosecutors' submissions and to present her own arguments.

39. The Government did not make any submissions regarding this complaint.

40. The Court notes that it has already examined the same grievance in the past and has found a violation of Article 6 § 1 of the Convention in its *Göç v. Turkey* judgment (cited above, § 58). In that judgment, the Court held that, having regard to the nature of the principal public prosecutor's submissions and to the fact that the applicant was not given an opportunity to make written observations in reply, there had been an infringement of the applicant's right to adversarial proceedings (*loc. cit.* § 55).

41. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned case.

42. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the non-communication to the applicant of the public prosecutors' observations before the Antalya Assize Court and Court of Cassation.

3. Length of the proceedings

43. The applicant alleged that the length of the compensation proceedings was in breach of the “reasonable time” requirement under Article 6 § 1 of the Convention.

44. She stressed that her case had not required any lengthy judicial examination because it had not been complex. It had concerned an ordinary claim for compensation based on an unlawful detention.

45. The Government considered that the courts' handling of the applicant's case had complied with the “reasonable time” requirement. They contended that it had essentially been the conduct of the applicant that had delayed the determination of her claim. She had contributed to the prolongation of the proceedings by appealing against the judgments of the Antalya Assize Court on three occasions.

46. The court observes that the proceedings started on 13 February 1996, when the applicant lodged her claim with the Antalya Assize Court, and that they were terminated with the Court of Cassation's judgment of 24 December 2001 (see paragraphs 8 and 24 above). Accordingly, the period to be considered is approximately 5 years and 10 months.

47. 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 other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

48. As regards the nature of the case, the Court observes that, given that the determination of the claim involved the need to obtain expert evidence, it was of a certain complexity. Yet it does not share the Government's opinion that the applicant contributed to the length of the proceedings. The applicant cannot be reproached for having made use of her procedural rights. In particular, there is nothing to indicate that she abused appeal procedures or wasted the courts' time with vexatious and purely self-serving motions.

49. As regards the conduct of the judicial authorities, the Court observes that during the period under consideration the case was heard by the courts at six instances. Although no hearing was held, the court examined the case

file regularly and, indeed no inordinate, delay in the proceedings occurred in connection with the taking of expert evidence (see paragraphs 13-16 above). Consequently, the Court considers that the authorities displayed due diligence in handling the applicant's case.

50. In view of the foregoing and having regard to the overall length of the proceedings, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

51. The applicant complained under Article 1 of Protocol No. 1 that the non-pecuniary damage that was awarded to her by the court has still not been paid. Article 1 of Protocol No. 1 provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

52. The Government contended that the applicant did not exhaust the domestic remedies as she did not apply to the authorities in order to receive her compensation.

53. The applicant contended that she did not have to apply to the authorities to receive her compensation. As her address was known to the court, the authorities should have taken the initiative to pay her the awarded amount. Furthermore, the applicant claimed that to initiate execution proceedings against the Treasury would have been futile as State property cannot be confiscated.

She additionally maintained that she refused to receive the compensation as the awarded amount was too little.

54. The Court observes that the applicant cannot be considered to have exhausted all domestic remedies available to her as she did not apply to the domestic authorities to collect her compensation awarded by the court. Even assuming that she was not required by law to apply to a domestic authority to collect the relevant amount, she should have at least complained to the authorities of the fact that no payment was made to her following the Antalya Assize Court's final judgment.

55. In the light of the foregoing, the Court finds that the applicant failed to exhaust domestic remedies and this complaint should therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed the sum of 250 euros (EUR) in respect of her hospital expenses.

58. As regards non-pecuniary damages, considering her distress caused by her unlawful detention and the time that elapsed since her detention, the applicant claimed EUR 10,000. Furthermore, in view of the length of the proceedings and the unfairness of the proceedings she claimed EUR 2,000.

59. The Government maintained that the medical reports confirmed that the applicant's health problems were not caused by her detention in police custody. Since there was no link between the applicant's illness and her detention in police custody, her pecuniary claims should be dismissed. Moreover, they claimed that her claim for non-pecuniary damages were excessive.

60. The Court has found that Article 6 of the Convention has been violated on account of the absence of an oral hearing in the domestic proceedings and the non-communication to the applicant of the public prosecutors' submissions. It does not discern any causal link between the violations found and the applicant's hospital expenses. It therefore rejects her claim for pecuniary damages.

61. Moreover, the Court considers that the finding of violations constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

62. The applicant sought the reimbursement of EUR 3,000 for her costs and expenses incurred in the domestic and Convention proceedings. She did not produce any supporting documents.

63. The Government submitted that the claims were excessive and unsubstantiated. They argued that no receipt or any other document had been produced by the applicant to prove her claims.

64. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant the sum of EUR 1,000 under this head.

C. Default interest

65. 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 complaints under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the absence of an oral hearing in the domestic proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-communication to the applicant of public prosecutors' written opinions;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
5. *Holds* that finding of violations constitutes in itself sufficient compensation for any non-pecuniary damage;
6. *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 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Bostjan M. ZUPANČIČ
President