



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

THIRD SECTION

CASE OF AYÇOBAN AND OTHERS v. TURKEY

(Applications nos. 42208/02, 43491/02 and 43495/02)

JUDGMENT

STRASBOURG

22 December 2005

FINAL

22/03/2006

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 Ayçoban and Others 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,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 December 2005,

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

PROCEDURE

1. The case originated in three applications (nos. 42208/02, 43491/02, and 43495/02) 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 Turkish nationals, Mr Ferman Ayçoban, Mr Aziz Yiğit, and Mr Şirin Meygil (“the applicants”) on 18 November 2002.

2. The applicants were represented by Mr M. Özbekli, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. 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).

4. On 13 January 2005 the Court joined the applications. It further decided to declare the applications partly inadmissible and to communicate the complaints concerning the lack of prompt and detailed information on the nature and cause of the accusations, and the non-communication to the applicants of the submissions of the Principal Public Prosecutor to the Court of Cassation. Under Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

5. The applicants and the Government each filed observations on the admissibility and merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1973, 1975, and 1980 respectively. They were detained in Elazığ Prison in Turkey.

7. On 14 March 1999 the police raided a flat which was used as a cell by Hezbollah in Mardin. The police officers seized, among other things, three computer hard disks during the operation. The applicants' names were recorded on these hard disks as members of Hezbollah.

8. On 4 June 1999 the applicants were arrested by police officers from the anti-terror branch of the Diyarbakır Security Directorate on suspicion of being members of Hezbollah. On the same day, the police officers drafted arrest protocols stating that the applicants had been arrested in the course of an operation conducted against the members of the illegal organisation.

9. On 5 June 1999 the public prosecutor of the Diyarbakır State Security Court drew up a list of the materials that were seized during the raid in Mardin in order to place them in the custody of the court, amongst which the computer hard disks were noted.

10. On 11 June 1999 the applicants gave statements to the police where they accepted the charges against them. On the same day, they were brought before the public prosecutor, and thereafter before the investigating judge of the Diyarbakır State Security Court, where they denied both the accuracy of the statements taken by the police and all the charges against them. The investigating judge ordered that the applicants be detained on remand.

11. On 25 June 1999 the public prosecutor filed an indictment with the Diyarbakır State Security Court, accusing the applicants of being members of Hezbollah pursuant to Article 168 § 2 of the Criminal Code.

12. At the hearings before the Diyarbakır State Security Court the applicants denied the content of their police statements alleging that they were taken under duress. The court read out the police statements that were taken from M.Ç., M.P. and A.Y. – who were also accused of being members of the same organisation – to the applicants and asked the latter to comment on them. The applicants stated that they did not know these persons, and that they did not accept the parts of the statements that were against them. The court further read out the transcriptions of the hard disks to the applicants and asked them about their counter-arguments against these. They denied the content of these documents. They further stated that they had no idea as to how their names had appeared on the computer hard disks.

13. On 27 December 2001 the Diyarbakır State Security Court noted that the applicants' police statements were supported by information gathered from the archive of the organisation and further evidence. It accordingly

convicted the applicants of the offence as charged and sentenced them to twelve years and six months' imprisonment. The applicants appealed.

14. The Principal Public Prosecutor at the Court of Cassation in his written submissions recommended that the court uphold the decision of the Diyarbakır State Security Court.

15. On 27 May 2002 the Court of Cassation, having regard, *inter alia*, to the opinion of the Principal Prosecutor, upheld the judgment of the Diyarbakır State Security Court.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicants alleged under Article 6 § 3 (a) of the Convention they had been denied a fair hearing in that they had not been informed in detail of the nature and the cause of the accusations against them. They further complained that the written observations of the Principal Public Prosecutor to the Court of Cassation were not communicated to them, thus depriving them of the opportunity to put forward their counter-arguments. The relevant parts of Article 6 §§ 1 and 3 of the Convention provides as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...

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

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

...”

A. Admissibility

18. 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 they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Non-information in detail of the nature and cause of the accusations

19. The Government submitted that the applicants were already informed about the charges against them when they were arrested. Following their arrest, arrest protocols were prepared in accordance with the legal procedures, containing necessary information about the charges. In addition, during their submissions before the court the applicants gave detailed statements regarding the accusations against them.

20. The applicants maintained their allegations.

21. The Court recalls that Article 6 § 3 (a) of the Convention gives an accused person the right to be informed of the cause of the accusation, i.e. the acts with which he is charged and on which his indictment is based, and of the nature of the accusation, i.e. the legal classification of the acts in question. In addition, the information about the nature and cause of the accusation must be adequate to enable the accused to prepare his defence accordingly.

22. The Court first notes that the arrest protocols which were drafted after the arrest contained information about the charges and were signed by the applicants. The Court further notes that the bill of indictment lodged against the applicants was sufficiently concrete to enable them to determine the offences with which they were charged. It contained a detailed description of the suspected offences and the alleged facts of their commission. The applicants were able to challenge these conclusions before the domestic court and were assisted by lawyers to this effect. In these circumstances, the Court considers that there can be no doubt that the applicants received full information about the charges against them.

23. The Court, therefore, concludes that there has been no violation of Article 6 § 3 (a) of the Convention.

2. Non-communication of the public prosecutor's written opinions submitted to the Court of Cassation

24. The Government submitted that the written opinion of the Principal Public Prosecutor does not have a binding nature on the Court of Cassation, as it is free to decide on appeals regardless of the Prosecutor's opinion. They further maintained that the applicants' representative always had the right to consult the case file and find out about the concerned document in the file. Finally, the Government pointed to the recent amendment of 27 March 2003 to Article 316 of the Code of Criminal Procedure, which now provides that the written opinion of the Principal Public Prosecutor of the Court of Cassation shall be notified to the parties.

25. The applicants maintained their allegations.

26. The Court notes that 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, § 14). 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).

27. 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.

28. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants claimed 30,000 euros (EUR) each in respect of pecuniary and non-pecuniary damage.

31. The Government contended that the amounts claimed were excessive and unjust.

32. The Court notes that the applicants failed to substantiate that they incurred pecuniary damage as a result of the breach of their Convention rights. Therefore, it disallows the claims under this head. It further considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

33. The applicants also claimed EUR 1,570 for the costs and expenses incurred before the Court. They did not produce any supporting documents.

34. The Government submitted that the claim was excessive and unsubstantiated. They argued that no receipt or any other document had been produced by the applicants to prove their claims.

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

C. Default interest

36. 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 concerning the lack of communication of the principal public prosecutor's submission, and non-information in detail of the nature and cause of the accusations admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-communication of public prosecutor's written opinions;
3. *Holds* that there has been no violation of Article 6 § 3 of the Convention, on account of the lack of prompt and detailed information of the accusations;
4. *Holds* that finding of a violation constitutes itself sufficient compensation for any non-pecuniary damage incurred by the applicants;
5. *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, a total sum of EUR 1,000 (thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable at the date of the 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President