



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

THIRD SECTION

CASE OF MEVLÜT KAYA v. TURKEY

(Application no. 1383/02)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Mevlüt Kaya v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mr R. TÜRMEŖ,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 1383/02) 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, Mr Mevlüt Kaya (“the applicant”), on 5 July 2002.

2. The applicant was represented by Mr M. Sürücü, 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 4 May 2004 the Court decided to give notice of the application to the Government. 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1951 and lives in İzmir.

5. On 11 April 2000 the İzmir State Security Court ordered the confiscation of the applicant's car on the ground that it had been used during the commission of a crime. The applicant did not wish to surrender his car.

6. On a unspecified date, the İzmir public prosecutor took a statement from the applicant and on 10 July 2001 he filed a bill of indictment with the İzmir Magistrate's Court accusing the applicant of “not obeying the official authorities' order”. He requested that the applicant be punished, pursuant to Article 526 § 1 of the Turkish Criminal Code.

7. On 17 July 2001 the İzmir Magistrate's Court, without holding a public hearing, issued a penal order pursuant to Article 386 of the Code of Criminal Procedure. It decided over the content of the case file and sentenced the applicant to three months' imprisonment and a fine of 35,591,400 Turkish liras (TRL). The court then commuted the imprisonment to a fine and sentenced the applicant to a total fine of TRL 249,139,300¹.

8. On 13 August 2001 the applicant challenged this decision before the İzmir Criminal Court. He requested that the Criminal Court hold a hearing to examine his appeal.

9. On 24 August 2001, the İzmir Criminal Court upheld the decision of the Magistrate's Court without a hearing, noting that it was in accordance with the law and procedure.

10. The applicant paid the fine in question on 10 December 2001.

II. THE RELEVANT DOMESTIC LAW

11. The relevant Articles of the Code of Criminal Procedure which was in force at the time of the events, read as follows:

Article 302

“Save the exceptional circumstances described by law, the courts shall decide on objections filed against the penal orders without holding a hearing.

If the objection is upheld, the same court shall decide on the merits of the case.”

Article 386

“The judge at the Magistrates' Court may, without holding a hearing, rule on the offences which are within the jurisdiction of the Magistrates' Court and it may subsequently issue a penal order.

Only the sentencing to a fine, an imprisonment up to three months, a suspension of a certain profession and a seizure (...) may be adjudicated by a penal order. (...)”

Article 387

“If the judge at the Magistrates' Court considers that the lack of a hearing may put the offender in an unfavourable situation, then it could be decided to hold a hearing. “

Article 388

“In addition to the conviction, it should be noted in the penal order, the designation of the offence, the applicable provisions of law, the relevant evidence, and the possibility of raising an objection within eight days after its notification (...). The petition which raises an objection to the penal order shall be approved by the trial judge. (...)”

¹ Approximately 200 euros at the material time

Article 390

“A hearing shall be held if the objection is raised against an imprisonment sentence given by a penal order. (...)”

The suspect can be represented by a defence counsel during the hearing. (...)

The objections against the penal orders (...) are examined by a judge at the criminal court of first instance, in line with the procedure described under Articles 301, 302 and 303. The objection would suspend the execution of the penal order.”

12. In a judgment given on 30 June 2004 the Constitutional Court declared Article 390 § 3 of the Code of Criminal Procedure unconstitutional and a nullity. It held that the lack of a public hearing before the Criminal Court of First Instance that examines the objections against the penal orders, would be in breach of the right guaranteed under Article 6 of the Convention, as well as Article 36 of the Constitution.

13. Additionally, the new Criminal Code and the Code of Criminal Procedure, which came into force on 1 June 2005, contain no provision concerning penal orders.

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1, 2 and 3(c) OF THE CONVENTION**

14. The applicant complained that he had been unable to defend himself in person or through legal assistance, as there had been no public hearing in his case. He further alleged that the principle of the presumption of innocence had also been violated in the present case. He invoked Article 6 §§ 1, 2 and 3 (c) of the Convention, which, in so far as relevant, reads as follows:

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

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to 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;”

15. The Government contended that the procedure followed by the judicial authorities was in compliance with the relevant provisions of the Code of Criminal Procedure. It was a simplified procedure for minor crimes, aimed at diminishing the work load of the courts. Additionally, they

noted that the Magistrates' Court did not consider it necessary to hold a hearing as it regarded the applicant's statement taken by the public prosecutor and the documents found in the case file sufficient to decide on the case.

A. Admissibility

16. The Court notes that the application 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

1. The general principles

17. The Court reiterates that it is a fundamental principle enshrined in Article 6 § 1 that court hearings should be held in public. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the principles of any democratic society (see, among others, *Stefanelli v. San-Marino*, no. 35396/97, § 19, ECHR 2000-II).

18. It recalls that, read as a whole, Article 6 guarantees the right of an accused to participate effectively in a criminal trial. In general this includes not only the right to be present, but also the right to receive legal assistance, if necessary, and to follow the proceedings effectively. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of Article 6 § 3 (see, among others, *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, pp. 10–11, § 26).

19. Furthermore, Article 6 § 1 does not guarantee a right to appeal from a decision of first instance. Where, however, domestic law provides for a right of appeal, the appeal proceedings will be treated as an extension of the trial process and accordingly will be subject to Article 6 (*Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, § 25).

2. Application of these principles to the present case

20. The Court considers that, in the instant case, it is more appropriate to deal with the applicant's complaints under Article 6 § 1 globally due to the overlapping nature of the issues and since Article 6 § 2 and the sub-paragraphs of Article 6 § 3 may be regarded as specific aspects of the general fairness guarantee of the first paragraph.

21. At the outset, the Court notes that in a judgment given on 30 June 2004, the Constitutional Court unanimously declared Article 390 § 3 of the former Criminal Code unconstitutional and a nullity, holding that depriving individuals of a public hearing was in violation of the right to a fair trial. Furthermore, with the new Criminal Code and the Code of Criminal Procedure which came into force on 1 June 2005, the practice of issuing penal orders ceased to exist.

22. It notes, however, that in accordance with the relevant domestic law prevailing at the time of the events, no public hearing was held during the applicant's prosecution. Both the İzmir Magistrate's Court that issued a penal order and sentenced the applicant to pay a fine and the İzmir Criminal Court that examined his objection, took a decision on the basis of the documents found in the case file. The applicant's statement was taken only by the İzmir Public Prosecutor. He was not given the opportunity to defend himself in person or through a lawyer before the courts that decided on his case. The Court, therefore, considers that the applicant was not able to follow the criminal proceedings effectively.

23. In view of the above, the Court concludes that the procedure followed by the judicial authorities prevented the applicant from exercising his defence rights properly and thus rendered the criminal proceedings unfair.

24. It holds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contended that the applicant's claim was excessive and unacceptable.

28. The Court notes the causal link between the violation of Article 6 § 1 and the applicant's obligation to pay the fine (see, *mutatis mutandis*, *Nikula v. Finland*, no. 31611/96, § 63, ECHR 2002-II). It therefore considers that the applicant suffered pecuniary damage of TRL 249,139,800. On the basis of the average exchange rates applicable on the date of payment, the Court awards him EUR 200 for the pecuniary damage.

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

B. Costs and expenses

30. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

31. The Government argued that the applicant failed to substantiate this claim.

32. The Court, deciding on an equitable basis and considering its case-law, awards the applicant EUR 500 under this head.

C. Default interest

33. 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 application admissible;
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 applicant;
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, the following sums, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 200 (two hundred euros) in respect of pecuniary damage,
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses,
 - (iii) plus any tax that may be chargeable;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President