



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

THIRD SECTION

CASE OF AYDIN AND ŞENGÜL v. TURKEY

(Application no. 75845/01)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

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 Aydın and Şengül 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. TÜRMESEN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 5 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 75845/01) 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 Necati Aydın and Mr Ercan Şengül (“the applicants”), on 28 March 2001.

2. The applicants were represented by Mr O.K. Cengiz, 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 22 June 2006 the Court declared the application partly inadmissible and decided to communicate the complaints raised by the applicants in their additional application form, dated 29 October 2002, 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 applicants were born in 1972 and 1962 respectively and live in İzmir.

5. In the course of criminal proceedings against them, the applicants were remanded in custody between 7 March 2000 and 30 March 2000.

6. Following their acquittal, the applicants applied to the Bergama Assize Court on 13 July 2000 and sought compensation for both non-pecuniary and pecuniary damage pursuant to Law no. 466 pertaining to the payment of compensation to persons unlawfully arrested or detained.

7. On 12 February 2001 the İzmir Assize Court, relying on the experts' report, awarded each applicant 86,801,820 Turkish liras (TRL) (approximately EUR 51) for pecuniary and TRL 500,000,000 (approximately EUR 300) for non-pecuniary damage. It further awarded the applicants a certain amount for costs and expenses incurred before the criminal court. The court, however, did not rule on the applicants' request for interest running from the date of their action.

8. On 30 November 2001 the Court of Cassation rectified a calculation mistake and upheld the judgment of the first-instance court. This decision was not served on the applicants but was deposited with the registry of the first-instance court on 16 January 2002. The applicants failed to provide the date on which they learned of this judgment.

9. On 8 May 2002 the applicants applied to the İzmir Provincial Finance Directorate requesting payment of their compensation. The authorities paid the amount due on 11 December 2002.

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 OF THE CONVENTION

11. The applicants complained that their right to a fair and public hearing under Article 6 of the Convention was breached on two counts: firstly, they were never afforded an oral hearing in the determination of their compensation claim; secondly, they were never given an opportunity to reply to the public prosecutor's written opinion submitted to the Court of Cassation and the experts' report submitted to the Assize Court.

12. The applicants further complained under Article 1 of Protocol No. 1 that the compensation, including costs and expenses, awarded to them was too low.

13. The Court considers that these complaints should be examined from the standpoint of Article 6 § 1, which in so far as relevant provides:

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

14. The Court reiterates that, where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33), whereas in cases where the domestic law does not provide for service, the Court considers it appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to be informed of its content (see, among many others, *Seher Karataş v. Turkey*, no. 33179/96, § 27, 9 July 2002, and *Karatepe v. Turkey* (dec.), no. 43924/98, 3 April 2003).

15. In the instant case, the “final decision” within the meaning of Article 35 § 1 of the Convention was the judgment of the Court of Cassation on 30 November 2001. This decision was not notified to the applicants and they were unable to supply the Court with the date on which they became aware of it. However, the Court of Cassation's decision was at the disposal of the applicants and their lawyer as of 16 January 2002 when the judgment was sent to the registry of the first-instance court (see, in particular, *Ertuğrul Kılıç v. Turkey*, (dec.), no. 38667/02, 4 October 2005).

16. Although the applicants' initial application to the Court was dated 28 March 2001, their complaints under this head were only raised for the first time in their additional application form dated 29 October 2002. The Court reiterates that, when a new complaint is raised for the first time during the proceedings before the Court, the six month period is not interrupted until this complaint is actually lodged (see, *Sarl Aborcas and Borowik v. France* (dec.), no. 59423/00, 10 May 2005, and *Loyen v. France* (dec.), no. 46022/99, 27 April 2000).

17. In view of the above, the Court considers that this part of the application must be rejected for non-compliance with the six-month rule in accordance with Article 35 §§ 1 and 4 of the Convention.

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

18. The applicants complained about the delay in which the national authority settled the compensation awarded to them. They relied on Article 1 of Protocol No. 1, which reads 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.”

A. Admissibility

19. The Government maintained that the applicants had failed to exhaust domestic remedies, as required under Article 35 § 1 of the Convention, since they had lodged their application with the Court before the compensation proceedings became final. They further argued that, to receive payment, the applicants should have applied to the Execution Office.

20. The applicants referred to their earlier submissions.

21. The Court observes, firstly, that the applicants' complaint under this head was introduced with the Court on 29 October 2002 (see paragraph 3 above), i.e. after the compensation proceedings became final. Moreover, the Court recalls that it has already examined and rejected the Government's objections regarding the failure to apply to the Execution Office for enforcement of the judgment in previous cases (see, in particular, *Dildar v. Turkey*, no. 77361/01, § 17, 12 December 2006, and *Mehmet Sait Kaya v. Turkey*, no. 17747/03, § 13, 25 July 2006). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned applications. It therefore rejects the Government's objections under this head.

22. 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

23. The Government disputed the applicants' arguments. In particular, they suggested that the applicants could have asked for interest to be applied to their compensation when they petitioned the authorities on 8 May 2002.

24. The applicants referred to their earlier submissions.

25. The Court observes that it has found a violation of Article 1 of Protocol No. 1 in a number of cases that raise similar issues to those arising here (see, in particular, *Ertuğrul Kılıç v. Turkey*, no. 38667/02, §§ 20-21, 12 December 2006).

26. The Court has examined the present case and finds no particular circumstances which would require it to depart from that conclusion in the present case since by failing for around twelve months to comply with the judgment in the applicants' favour, together with the fact that no default

interest was applied to the compensation for delay, the domestic authorities prevented the applicants from receiving the money they could reasonably have expected to receive.

27. There has accordingly been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants each claimed 20,000 euros (EUR) in respect of non-pecuniary damage. They did not claim any pecuniary damage.

30. The Government contested the amount.

31. The Court considers that the finding of violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants (see *Ertuğrul Kılıç*, cited above, § 28). It therefore rejects the claims under this head.

B. Costs and expenses

32. The applicants also claimed, without any justification, EUR 5,000 for costs and expenses.

33. The Government contested the amount.

34. The Court finds that since the applicants submitted no justification as regards costs and expenses, as required by Rule 60 of the Rules of Court, it makes no award under this head.

C. Default interest

35. 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 complaint concerning the delay in which the national authority settled the compensation awarded to the applicants admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President