CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF BAYBAŞİN v. THE NETHERLANDS

(Application no. 13600/02)

JUDGMENT
(Just satisfaction)

STRASBOURG

7 June 2007

FINAL

07/09/2007

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 Baybaşin v. the Netherlands,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 13600/02) against the Kingdom of the Netherlands 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, Hüseyin Baybaşin ("the applicant"), on 28 February 2002.

2. In a judgment delivered on 6 July 2006 ("the principal judgment"), the Court held that the weekly routine strip-searches to which the applicant had been subjected between 16 July 2001 and 21 November 2002 in the course of his stay in the maximum security institution ("EBI") were contrary to his rights under Article 3 of the Convention (*Baybaşin v. the Netherlands*, no. 13600/02, §§ 59-61, 6 July 2006).

3. Under Article 41 of the Convention the applicant sought just satisfaction for non-pecuniary damage, leaving the determination of the award under this head to the discretion of the Court. He did, however, consider that it should be much higher than the amount of 3,000 euros (EUR) awarded by the Court in the similar case of *Van der Ven v. the Netherlands*, (no. 50901/99, § 76, ECHR 2003-II) as compensation for non-pecuniary damage based on the standard used by the Court in that case would not accurately reflect the extent of the psychological distress he had suffered in the EBI. The applicant further sought an award of EUR 2,380 for legal costs and expenses incurred by him.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any

agreement they might reach (*Baybaşin v. the Netherlands*, cited above, §§ 84 and 90, and point 4 of the operative provisions).

5. An attempt to reach a friend settlement having failed, the applicant and the Government each filed observations on the application of Article 41 of the Convention whereupon the Government but not the applicant filed comments in reply.

THE LAW

6. 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. Costs and expenses

7. Under this head, the applicant claimed EUR 2,856, including 19% value-added tax (VAT), which amount corresponded to twelve hours' work by his lawyer at an hourly rate of EUR 200 and only relating to the proceedings under the Convention. Although the applicant had been granted legal aid for those proceedings under the domestic legal aid scheme, his lawyer requested the Court to award the total amount of EUR 2,856 as this sum corresponded to a reasonable fee which the lawyer would have charged the applicant had he not been in receipt of free legal aid, whereas the legal aid allowance under the domestic scheme was likely to be about EUR 1,500 less and the domestic legal aid (offer) could still be turned down by the applicant or his lawyer.

8. The Government, noting that the applicant had been granted legal aid under the Netherlands domestic legal aid scheme for the proceedings before the Court, were of the opinion that the costs incurred during these proceedings were already adequately covered. Relying on the Court's considerations in respect of costs and expenses claimed in the case of *Visser v. the Netherlands* (no. 26668/95, § 59, 14 February 2002), they considered that there is no need to pay costs incurred in proceedings under the Convention if an applicant qualifies for subsidised legal aid under a domestic legal aid scheme.

9. Reiterating its considerations and decision in respect of the claim for costs and expenses filed in the case of *Van der Ven v. the Netherlands*, (cited above, § 79) in which case the applicant made the same request as the applicant in the instant case, the Court finds no reason to take a different approach in the case at hand. Consequently, as the applicant is entitled to

legal aid in respect of the present proceedings under the Netherlands domestic legal aid system, the Court is of the opinion that there is no ground for making an award under this head.

B. Damage

10. The applicant submitted that he had been detained in the EBI for a period of five and a half years during which he had been subjected to weekly routine strip-searches and that, to date, he had to deal with physical and mental problems as a result of his treatment in the EBI. In this connection, the applicant referred to the findings of a psychiatrist who had concluded that the applicant had developed a post-traumatic stress disorder and a depressive disorder during and as a result of his treatment in the EBI.

11. The applicant further submitted that the question of the application of Article 41 did not yet seem ready for decision, as the proceedings on the civil action in tort he had brought against the Netherlands State before the Regional Court (*arrondissementsrechtbank*) of The Hague were still pending (see *Baybaşin*, cited above, § 19).

12. The Government submitted that an award for compensation for non-pecuniary damage should be proportionate to the period of the applicant's detention in the EBI falling within the scope of the application, namely a period of sixteen months. On that basis, the Government considered that an amount of EUR 2,000 would be reasonable.

13. The Court accepts that the applicant suffered some non-pecuniary damage as a result of the treatment to which he was subjected in the EBI during the period falling within the scope of the application, namely a period of slightly more than sixteen months. However, the Court notes that – when it adopted the principal judgment in the case – the applicant had already taken domestic civil proceedings in tort against the Netherlands State in which he was claiming *inter alia* compensation for non-pecuniary damage suffered on account of having been subjected to weekly routine strip-searches in the EBI which treatment the Court, in the principal judgment, found in violation of Article 3 of the Convention. The Court further notes that these domestic proceedings are currently still pending at a first instance stage.

14. The Court reiterates its considerations set out in §§ 67-84 of the principal judgment and has found no reasons for holding that the domestic civil action taken by the applicant would stand no reasonable chance of success in so far as, in these proceedings, he is seeking compensation of non-pecuniary damage in respect of the violation of his rights under Article 3 of the Convention as found by the Court in the principal judgment.

15. In the light of Article 37 § 1 (c) of the Convention the Court finds that, in these circumstances, it is not justified to continue its examination of the question of the application of Article 41 of the Convention as regards

the applicant's claim for compensation of non-pecuniary damage which would imply adjourning it pending a final domestic decision on this matter. In accordance with Article 37 § 1 *in fine* of the Convention, the Court finds no special circumstances regarding respect for human rights as defined in the Convention which require the continuation of the examination of this part of the application.

16. Consequently, this part of the application should be struck out of the list. In reaching this conclusion, the Court has taken into account its competence under Article 37 § 2 of the Convention to restore the case to its list of cases if it considers that the circumstances justify such a course.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* unanimously the applicant's claim for costs and expenses;

2. *Decides* to strike the remainder of the application out of its list of cases.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President