



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

THIRD SECTION

CASE OF MESUT YURTSEVER v. TURKEY

(Application no. 42086/02)

JUDGMENT

STRASBOURG

19 July 2007

FINAL

19/10/2007

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 Mesut Yurtsever 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 A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 28 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 42086/02) 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 Mesut Yurtsever (“the applicant”) on 26 October 2002.

2. The applicant was represented by Mr M. Beştaş, 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 31 August 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning non-communication to the applicant of the submissions of the principal public prosecutor 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 1974 and lives in Istanbul.

5. On 6 April 1999 the applicant was arrested and taken into custody by police officers from the anti-terrorism branch of the Istanbul Security Directorate on suspicion of membership of the PKK (the Workers' Party of Kurdistan).

6. On 13 April 1999 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and two others, accusing them, *inter alia*, of membership of an illegal armed organisation and of participating in separatist activities. The public prosecutor sought the death penalty for the applicant pursuant to Article 125 of the Criminal Code.

7. On 25 September 2001 the Istanbul State Security Court convicted the applicant of as charged and sentenced him to death, which sentence was later commuted to life imprisonment. The judgment was *ex officio* subject to appeal.

8. On 17 January 2002 the Principal Public Prosecutor submitted his written opinion to the 9th Division of the Court of Cassation, in which he had argued that the Court of Cassation should quash the applicant's conviction on account of the severity of the sentence imposed on the applicant. He opined that the applicant should have been sentenced pursuant to Article 168 § 2 of the Criminal Code, which punishes membership of an illegal organisation, instead of Article 125.

9. On 20 April 2002 the Court of Cassation held a hearing, differed with the opinion of the Principal Public Prosecutor, and upheld the judgment of the Istanbul State Security Court. The applicant's representative did not attend this hearing. The decision was pronounced in the absence of the applicant and his representative on 1 May 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, § 34, ECHR 2002-V).

11. On 2 January 2003 Article 316 of the Code of Criminal Procedure Law was amended to provide that the written opinion of the principal public prosecutor at the Court of Cassation be notified to the parties.

THE LAW

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

12. The applicant complained that the written opinion of the Principal Public Prosecutor at the Court of Cassation had never been served on him, thus depriving him of the opportunity to put forward his counter-arguments. He relied on Article 6 § 3 (b) of the Convention.

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

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

14. 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

15. The Government maintained, in particular, that the applicant had the possibility to submit his counter-arguments since the written opinion of the Principal Public Prosecutor had been read out during the hearing before the Court of Cassation. They argued that had the applicant's representative attended the hearing he would have been aware of the opinion of the Principal Public Prosecutor and thus could have challenged them and submitted counter-arguments.

16. The applicant maintained his allegations.

17. 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 (see, in particular, *Göç*, cited above, § 55; *Sağır v. Turkey*, no. 37562/02, § 26, 19 October 2006, and *Ayçoban and Others v. Turkey*, nos. 42208/02, 43491/02 and 43495/02, 22 December 2005).

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant did not claim pecuniary damage. He claimed 20,000 new Turkish liras (YTL), approximately 11,214 euros (EUR), in respect of non-pecuniary damage.

22. The Government contended that the amount claimed was excessive and unjustified.

23. The Court considers that, in the present case, the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see, *mutatis mutandis*, *Parsil v. Turkey*, no. 39465/98, § 38, 26 April 2005; and *Ayçoban and Others*, cited above, § 32).

B. Costs and expenses

24. The applicant also claimed YTL 9,800 (approximately EUR 5,488) for the costs and expenses that had incurred in the preparation and presentation of the case before the Court.

25. The Government contested the amount.

26. 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

27. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that finding of a violation constitutes itself sufficient compensation for any non-pecuniary damage incurred 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, EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into new Turkish liras at the rate applicable at the day of settlement, 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 amount 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 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President