



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

THIRD SECTION

CASE OF GÖKTAŞ v. TURKEY

(Application no. 66446/01)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

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 Göktaş 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,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 66446/01) 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 a Turkish national, Mr Mahir Göktaş (“the applicant”), on 4 October 2000.

2. By a letter dated 21 November 2006, the Registry was informed of the death of the applicant, Mr Mahir Göktaş on 19 August 2006. On 18 December 2006 the applicant's father Mr Muharrem Göktaş and his mother Mrs Fatma Göktaş declared their intention to pursue the application. For practical reasons, Mr Mahir Göktaş will continue to be called “the applicant” in this judgment, although his parents are now to be regarded as such.

3. The applicant's parents were represented by Mr Terzi, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

4. The applicant alleged that the facts of the case disclosed a breach of Articles 6, 13 and Article 1 of Protocol No. 1 to the Convention.

5. On 20 June 2005 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

6. The applicant was born in 1981 and lived in Izmir.

7. On 29 December 1995 the applicant was arrested and taken into police custody on suspicion of membership of an illegal organisation, namely the DHKP-C (Revolutionary People's Liberation Party-Front). He was fourteen years' old at the time.

8. On 5 January 1996 the applicant was brought before the İzmir State Security Court and he was placed in detention on remand.

9. On 15 October 1996, taking into account the applicant's age at the time of the offence, the İzmir State Security Court held that he could not have been aware of the nature and consequences of the offence and decided that there was no need to impose a penalty on him.

10. On 20 August 1997 the applicant applied to the Bergama Assize Court 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.

11. On 31 March 1998 the Bergama Assize Court awarded the applicant 59,925,000 Turkish Liras (TRL) for pecuniary damage and TRL 150,000,000 for non-pecuniary damage.

12. On 28 December 1998 the Court of Cassation held that the applicant, who was a student at the time of the events, had not submitted any documents or reasons which could support his pecuniary damage claims. It therefore quashed the judgment of the first instance court.

13. On 28 January 1999 the proceedings resumed before the Bergama Assize Court. The court decided to hold a hearing on 5 March 1999. The applicant and his representative were summoned to attend the hearing. On 21 February 1999 the applicant's representative submitted a petition to the Court and stated that the applicant should be awarded adequate compensation. Neither the applicant nor his representative attended the hearing which was held before the Bergama Assize Court on 5 March 1999. On 10 March 1999 the Bergama Assize Court awarded the applicant TRL 150,000,000 in respect of non-pecuniary damage and dismissed his claims for pecuniary damage. The court held that the applicant, who was a student at the time of the events, had not been in paid employment. It further decided not to apply default interest to the sum awarded for non-pecuniary damage.

14. On 25 April 2000 the Court of Cassation upheld the aforementioned judgment¹.

¹ 150,000,000 Turkish liras was approximately equivalent to 265 euros in April 2000.

15. On 21 June 2007 the applicant's parents were paid 150 New Turkish liras (YTL)¹.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law and practice concerning the notification of the written opinion of the principle public prosecutor at the Court of Cassation are outlined in *Göç v. Turkey* ([GC], no. 36590/97, §§ 27-34, ECHR 2002-V).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

17. The Government submitted that the case should be struck out of the Court's list of cases on the ground that the applicant's parents were not affected by the alleged violations, and thus could not claim to be victims within the meaning of Article 34 of the Convention.

18. The Court notes that the applicant died on 19 August 2006. On 18 December 2006 his parents expressed their wish to continue the application. The Court reiterates that in a number of cases in which an applicant died in the course of the proceedings, it has taken account the statements of the applicant's heirs or of close family members expressing their wish to pursue the proceedings before the Court (see, among many others, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI and *Latif Fuat Öztürk v. Turkey*, no. 54673/00, § 27, 2 February 2006 and *Mutlu v. Turkey*, no. 8006/02, §§ 13-14, 10 October 2006).

19. In view of the above, the Court holds that the applicant's parents have standing to continue the present proceedings in the applicant's stead. Consequently, the Government's objection that the case should be struck out is dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant maintained that his right to a fair and public hearing was breached on three counts: firstly, he was never afforded an oral hearing in the determination of his compensation claim; secondly, he was never given an opportunity to reply to the Public Prosecutor's written opinion submitted to the Bergama Assize Court and to the written opinion of the

¹ 150 New Turkish liras was approximately equivalent to 85 euros in June 2007.

Principal Public Prosecutor submitted to the Court of Cassation on the merits of his appeal and, thirdly, on account of the low amount of compensation awarded to him in respect of non-pecuniary damage.

Article 6 § 1 of the Convention provides as relevant:

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

A. Absence of an oral hearing in the domestic proceedings

21. The applicant argued that he was never afforded an oral hearing in the determination of his compensation claims.

22. The Government denied the allegation. They stated that the applicant and his lawyer had been summoned to attend the hearing which was held on 5 March 1999. However, they failed to do so.

23. The Court notes that, following the decision of the Court of Cassation, the proceedings resumed before the Bergama Assize Court. On 28 January 1999 the court decided that the applicant and his representative should be summoned to attend the hearing on 5 March 1999. The applicant's representative submitted a petition to the court on 23 February 1999 but neither he nor the applicant appeared before the court on 5 March 1999 (see paragraph 13 above).

24. Having regard to the above, the Court concludes that the applicant's allegations under this head are unsubstantiated and should be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Non-communication of the public prosecutors' written opinions submitted to the Bergama Assize Court and to the Court of Cassation

1. Admissibility

25. 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.

2. Merits

26. The applicant contended that he was not informed of the written submission of the public prosecutor submitted to the Bergama Assize Court as well as the opinion the principal public prosecutor submitted to the Court of Cassation. He therefore argued that he did not have the opportunity to respond to the prosecutors' submissions and to present his own arguments.

27. The Government denied the allegations. They stated that the applicant could have found out about the written opinion of the public prosecutor as all documents before the Court of Cassation could be examined by the parties.

28. The Court notes that it has already examined the same grievance and found a violation of Article 6 § 1 of the Convention in its *Göç v. Turkey* judgment (cited above, § 58). In that judgment, it 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).

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

30. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the non-communication to the applicant of the public prosecutors' observations before the Bergama Assize Court and Court of Cassation.

C. Fairness of the proceedings

31. The applicant argued that the amount of compensation awarded in respect of non-pecuniary damage was not sufficient. He also complained that, by rejecting his claims for pecuniary compensation, the national courts had erred in their decision.

32. The Court recalls that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34).

33. In the present case, it is observed that the national courts' decisions were given on the basis of domestic law and the particular circumstances of the case. The Court finds no element which might lead it to conclude that the domestic courts acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the domestic law. There is therefore no appearance of a violation of Article 6 § 1 in this respect.

34. In the light of the foregoing, the Court finds that this complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

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

35. The applicant complained under Article 1 of Protocol No. 1 about the delay of the national authorities in paying him the compensation awarded at a time when the annual inflation rate in Turkey had been very high and having regard to the fact that the compensations awarded under Law no. 466 were not subject to default interest.

Article 1 of Protocol No. 1 provides as follows as relevant:

“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. ...”

A. Admissibility

36. 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

37. The Court observes that by a judgment dated 10 March 1999 the Bergama Assize Court awarded the applicant non-pecuniary compensation and this judgment became final with the decision of the Court of Cassation dated 25 April 2004. It is also noted that the non-pecuniary compensation awarded by the national courts, which was not subject to default interest, was not paid to the applicant's parents until 21 June 2007.

38. The Court recalls 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, 12 December 2006).

39. Having examined the facts and arguments submitted by the Government, the Court considers that there is no reason to depart from the previous cases.

40. The Court therefore concludes that, as the authorities delayed paying the compensation and as no default interest was applied to the compensation, the applicant has had to bear an individual and excessive burden that has upset the fair balance that should be maintained between the demands of the general interest and the protection of the right to the peaceful enjoyment of possessions.

41. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicant maintained that Law no. 466 was not an effective remedy to provide redress for the time he had spent in detention.

43. The Government denied the allegation, indicating that the applicant had been awarded compensation for his time in detention.

44. In the light of its findings with regard to Article 1 of Protocol No. 1 above (paragraphs 42-47), the Court considers that no separate examination of Article 13 is necessary (*Ertuğrul Kılıç*, cited above, § 23).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 6,000 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

47. The Government maintained that the claims were excessive.

48. The Court notes that the pecuniary damage sustained by the applicant related to the delay in the payment of the compensation which he should have received when the domestic courts rendered their final decision. Using the method of calculation in *Aka v. Turkey* (judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicant's parents EUR 250 in respect of pecuniary damage.

49. The Court further notes that the finding of violations constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant. It therefore rejects the claims under this head.

B. Costs and expenses

50. The applicant sought the reimbursement of EUR 3,000 for his costs and expenses. He did not produce any supporting documents.

51. The Government submitted that the claims were excessive and unsubstantiated. They argued that no receipt or any other document had been produced by the applicant to prove his claims.

52. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant failed to submit any supporting documents in support of his claim. The Court therefore rejects this claim.

C. Default interest

53. 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 non-communication of the written opinions of the public prosecutors at the Bergama Assize Court and at the Court of Cassation, and the delay of the national authorities in paying the compensation amount admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-communication to the applicant of public prosecutors' written opinions;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine separately the applicant's complaint under Article 13 of the Convention;
5. *Holds* that finding of violations constitutes in itself sufficient compensation for any non-pecuniary damage;
6. *Holds*
 - (a) that the respondent State is to pay the applicant's parents, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 250 (two hundred and fifty euros) in respect of pecuniary damage, to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President