



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

SECOND SECTION

CASE OF NURHAN YILMAZ v. TURKEY

(Application no. 21164/03)

JUDGMENT

STRASBOURG

11 December 2007

FINAL

11/03/2008

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 Nurhan Yılmaz v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMESEN,

Mr M. UGREKHEDIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 20 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 21164/03) 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, Ms Nurhan Yılmaz (“the applicant”), on 9 June 2003.

2. The applicant was represented by Mrs Ö. Mungan, a lawyer practising in Mardin. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 25 October 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

4. The applicant was born in 1978 and lives in Izmir.

5. The applicant was the representative of the Izmir branch of a political journal, namely the “Bread and Justice” (*Ekmek ve Adalet*) magazine.

6. In April and May 2002, the Istanbul State Security Court declared several issues of this journal illegal and ordered their confiscation.

7. On 21 May 2002 police officers conducted a search in the branch building, where they found some books, cassettes, magazines and compact discs, which they believed to be illegal.

8. On an unspecified date, the Izmir public prosecutor took a statement from the applicant and, on 15 July 2002, he filed an indictment with the Izmir Magistrates' Court accusing the applicant of "not obeying the official authorities' order" under Article 526 § 1 of the Criminal Code.

9. On 6 September 2002 the Izmir Magistrates' Court, without holding a hearing, issued a penal order pursuant to Article 386 of the Code of Criminal Procedure, and sentenced the applicant to three months' imprisonment and a fine. The imprisonment measure was then commuted to a fine and the applicant was sentenced to a total fine of 381,682,144 Turkish liras ("TRL")¹.

10. On 21 November 2002 the applicant challenged this decision before the Izmir Criminal Court. On 3 December 2002 that court dismissed the applicant's appeal without a hearing. The applicant was notified of this final decision on 12 December 2002.

11. Because the applicant failed to pay her fine, on 21 January 2003, the Karşıyaka public prosecutor transformed the fine into a sentence of imprisonment. The applicant was imprisoned in April 2004 and was later released on probation due to good conduct.

II. RELEVANT DOMESTIC LAW

12. A full description of the relevant domestic law may be found in the judgment in the case of *Mevlüt Kaya v. Turkey* (no. 1383/02, §§ 11-13, 12 April 2007).

THE LAW

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

13. The applicant complained that she had been unable to defend herself in person or through legal assistance, as there had been no public hearing in her case. She relied on Article 6 §§ 1 and 3 (c) of the Convention, which in so far as relevant reads as follows:

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

1. Approximately 236 euros ("EUR") at the material time

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; ...”

14. The Government contended that the procedure followed by the judicial authorities had complied 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 contained in the case file to be sufficient to decide the case.

15. The Government further maintained that, following the coming into force of the new Criminal Code and the Code of Criminal Procedure, the penal order procedure no longer exists in Turkish law.

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 an 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 fundamental 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 the 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) 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 of appeal, but where the domestic law so provides, the appeal proceedings are to be treated as an extension of the trial process and, accordingly, must also comply with 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, the sub-paragraphs of Article 6 § 3 being 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, penal orders ceased to exist (paragraphs 12 and 15 above).

22. However, the Court notes that, in accordance with the relevant domestic law prevailing at the material time, no public hearing was held at any stage in the criminal proceedings against the applicant, who was without legal assistance. Consequently, the Court considers that the applicant was unable to follow these proceedings effectively.

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

24. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

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

25. The applicant alleged that the confiscation of the various books, cassettes, magazines and compact discs, following the police search (paragraph 7 above), constituted a breach of Article 1 of Protocol No. 1.

26. The Court notes that this property was owned by the journal, not the applicant, and that she did not lodge the present application to the Court as the journal's representative. Therefore, there has been no interference with any of her property rights, within the meaning of Article 1 of Protocol No. 1, and she cannot claim a breach of such rights on the journal's behalf.

27. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

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 applicant claimed YTL 100 (approximately 65 euros [“EUR”]) in pecuniary damage for those items confiscated by the police and not returned to her. She further claimed EUR 10,000 in respect of non-pecuniary damage.

30. The Government contended that the applicant's claims were excessive and unsubstantiated.

31. The Court does not discern any casual link between the violation found in respect of Article 6 § 1 and the pecuniary damage alleged. However, in the light of the severity of the sanctions ultimately imposed on the applicant without being heard by the trial court and without legal assistance, it finds that the applicant must have suffered some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,000 under this head².

B. Costs and expenses

32. The applicant also requested EUR 3,387 for the costs and expenses.

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

34. According to the Court's case-law, an applicant is entitled to reimbursement of 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 applicant has not substantiated that has actually incurred the costs so claimed. Accordingly, it makes no award under this head.

2. The Court's usual practice is not to award just satisfaction on those types of cases. However, in the present case, the fact that the applicant was imprisoned cannot be overlooked. Therefore, in the particular circumstances of this case, it finds it appropriate to award just satisfaction.

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 Article 6 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 non-pecuniary damage, which sum is to be converted into the currency of the respondent State at the rate applicable at the date of settlement, and free of any taxes or charges 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President