



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

THIRD SECTION

CASE OF BAKAY v. TURKEY

(Application no. 9464/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Bakay v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BİRSAN,
Mr R. TÜRMEŖ,
Mrs E. FURA-SANDSTRÖM,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

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

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 9464/02) 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 Orhan Bakay (“the applicant”), on 17 September 2001.

2. The applicant was represented by Mr M.A. Altunkalem, 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 28 September 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1973 and lives in Diyarbakır.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 11 August 1994 the applicant was taken into police custody on suspicion of membership of the PKK (*Workers' Party of Kurdistan*).

7. During an on-site inspection the applicant showed the location of a firearm to the security forces.

8. On 29 August 1994 the applicant was brought before a single judge at the Diyarbakır State Security Court who ordered his detention on remand.

9. On an unspecified date, the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment against the applicant, along with ten other persons. The applicant was accused of carrying out activities for the purpose of bringing about the secession of part of the national territory under Article 125 of the Criminal Code. The public prosecutor alleged that the applicant had been involved in a bombing with a certain H.Y.

10. On 25 November 1994 the applicant denied the allegations against him before the Diyarbakır State Security Court. On the same day, the applicant's lawyer asked the first-instance court to request information as to whether criminal proceedings were initiated against H.Y. regarding the alleged bombing. The Diyarbakır State Security Court accepted the request and requested the public prosecutor at this court to submit information.

11. On 30 March 1995 the public prosecutor at the Diyarbakır State Security Court informed the latter that there was a non-prosecution decision in respect of H.Y.

12. On 26 October 1995 the applicant's lawyer requested the Diyarbakır State Security Court that the applicant be released pending trial. His request was dismissed.

13. On 8 February 1996 the applicant's representative once again requested that the applicant be released pending trial. He maintained, *inter alia*, that according to the expert report drawn up in respect of the firearm belonging to the applicant, this gun had never been used in any illegal activity and that there was no other evidence against the applicant. His request was dismissed.

14. Between 8 February 1996 and 15 April 1999 the applicant requested to be released pending trial several times, reiterating that there was no evidence against him.

15. On 15 April 1999 the Diyarbakır State Security Court convicted the applicant for membership of the PKK under Article 168 § 2 of the Criminal Code and sentenced him to twelve years and six months' imprisonment.

16. The applicant appealed. In his appeal petition, he requested not to be convicted, invoking Repentance Law no. 4450, which provided for amnesty to members of terrorist organisations, claiming that he had surrendered his weapon to the security forces and provided information about the PKK.

17. On 18 June 1999 the Constitution was amended and the military judge sitting on the bench of the Diyarbakır State Security Court was replaced by a civilian judge.

18. On 10 February 2000 the Court of Cassation quashed the first-instance court's judgment in respect of the applicant and another accused, İ.B., holding that the first-instance court should consider their requests

under Law no. 4450. It then remitted the case-file to the Diyarbakır State Security Court.

19. On 13 April 2000 the Diyarbakır State Security Court requested the Ministry of the Interior to submit an opinion as to whether the applicant and İ.B. could benefit from Law no. 4450.

20. On 10 August 2000 the Ministry of the Interior replied that the accused should not benefit from the law in question. On the same day, the Diyarbakır State Security Court ordered the public prosecutor to make his submissions on the merits of the case.

21. On 5 October 2000 the public prosecutor submitted his opinion on the merits.

22. On 7 December 2000 the applicant filed his defence submissions.

23. On 14 December 2000 the Diyarbakır State Security Court dismissed the applicant's and İ.B.'s requests concerning the application of Law no. 4450 and convicted them under Article 168 § 2 of the Criminal Code. The applicant was sentenced to twelve years and six months' imprisonment. He appealed.

24. On 2 July 2001 the Court of Cassation upheld the judgment of 14 December 2000.

25. In the meantime, on 21 December 2000 Law no. 4616, which governed the conditional release, suspension of proceedings or execution of sentences in respect of offences committed before 23 April 1999, came into force. The Law stipulated that parole would not be applicable to persons who had committed offences under Article 168 of the Criminal Code. Thus, the applicant could not benefit from Law no. 4616.

26. On 31 October 2003 the applicant was released from prison during the proceedings that he had initiated in order to benefit from Law no. 4959, which provided for amnesty and mitigation of sentence for members of terrorist organisations.

THE LAW

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

27. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

28. The Government contested that argument.

29. The period to be taken into consideration began on 11 August 1994 and ended on 2 July 2001. It thus lasted approximately six years and eleven months before two levels of jurisdiction.

A. Admissibility

30. The Court notes that this part of 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

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

32. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above, and *Tendik and Others v. Turkey*, no. 23188/02, §§ 29-31, 22 December 2005).

33. Having examined all of the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 for non-pecuniary damage.

36. The Government submitted that no award should be made under this heading. They asserted, alternatively, that any award to be made by the Court should not lead to unjust enrichment.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,500 under that head.

B. Costs and expenses

38. The applicant also claimed EUR 2,665 for the costs and expenses incurred before the Court.

39. The Government contended that the applicant's claim was unsubstantiated.

40. 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, regard being had to the above criteria and the applicant's failure to substantiate his claim, the Court makes no award under this heading.

C. Default interest

41. 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*
 - (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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into New Turkish liras at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President