



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

SECOND SECTION

CASE OF UÇMA v. TURKEY

(Application no. 15071/03)

JUDGMENT

STRASBOURG

4 March 2008

FINAL

04/06/2008

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 Uçma v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Rıza Türmen,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 15071/03) 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 two Turkish nationals, Mr Erhan Uçma and Mr Yurttaş Uçma (“the applicants”), on 8 April 2003.

2. The applicants were represented by Mr S. Çetinkaya, a lawyer practising in Izmir. The Turkish Government (“the Government”) are represented by their agent.

3. On 3 October 2006 the Court declared the application partly inadmissible and decided to notify the Government of the applicants’ complaint concerning the non-communication to them of the submissions of the Principal Public Prosecutor at the Court of Cassation. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1979 and 1982 respectively and live in Izmir.

5. On 28 April 2001 the applicants were taken into police custody.

6. On 30 April 2001 the applicants were brought before the investigating judge, who ordered their detention on remand.

7. On 3 May 2001 the Izmir State Security Court public prosecutor filed an indictment against the applicants. He accused the first applicant of aiding and abetting an illegal organisation, and the second applicant of being a member of an illegal organisation.

8. On 13 September 2001 the Izmir State Security Court found the applicants guilty as charged and sentenced each of them to ten months' imprisonment and a fine.

9. On 6 December 2001 the Principal Public Prosecutor at the Court of Cassation submitted his written opinion on the merits of the appeal. He advised that the appeal be rejected and that the first-instance judgment be upheld.

10. On 24 January 2002 the Court of Cassation quashed the first-instance court's judgment on the ground that the applicants should have been sanctioned under Article 169 of the Criminal Code for aiding and abetting an illegal armed organisation.

11. On 16 May 2002 the Izmir State Security Court adhered to the reasoning of the Court of Cassation and convicted the applicants pursuant to Article 169 of the Criminal Code.

12. On 13 November 2002 the Principal Public Prosecutor submitted his written opinion on the merits of the case and stated that the Court of Cassation should uphold the judgment of the State Security Court.

13. On 28 November 2002, the Court of Cassation, in conformity with the opinion of the Principal Public Prosecutor, upheld the first instance judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

14. The applicants maintained under Article 6 § 1 of the Convention that their right to a fair trial was breached as they had not been given an opportunity to reply to the Principal Public Prosecutor's written opinion submitted to the Court of Cassation. Article 6 § 1 of the Convention reads as relevant:

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

A. Admissibility

15. 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

16. The applicants alleged that they were not informed of the written opinion of the Principal Public Prosecutor submitted to the Court of Cassation. In this connection, they argued that they did not have an opportunity to respond to the prosecutor's submission and to present their own arguments.

17. The Government denied the allegation. They stated that the applicants could have seen the written opinion of the Principal Public Prosecutor, as all documents before the Court of Cassation can be examined by the parties.

18. 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 (no. 36590/97, § 58, ECHR 2002-V). In that case, 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).

19. 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.

20. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the non-communication to the applicants of the Principal Public Prosecutor's submissions before the Court of Cassation.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants claimed 5,000 euros (EUR) each in respect of pecuniary damage and EUR 3,000 each in respect of non-pecuniary damage.

23. The Government contended that the amounts claimed were excessive and unacceptable.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Moreover, it considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

25. The applicants claimed EUR 3,000 for costs and expenses. They did not produce any supporting documents.

26. The Government submitted that the claim was excessive and unsubstantiated.

27. According to the Court’s case-law, an applicant is entitled to the 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, regard being had to the above criteria and the applicants’ failure to substantiate their claim, the Court makes no award under this head.

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 the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President