



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

SECOND SECTION

CASE OF ŞAHİN KARAKOÇ v. TURKEY

(Application no. 19462/04)

JUDGMENT

STRASBOURG

29 April 2008

FINAL

29/07/2008

This judgment may be subject to editorial revision.

In the case of Şahin Karakoç v. Turkey,

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

Antonella Mularoni, *President*,

Ireneu Cabral Barreto,

Rıza Türmen,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 19462/04) 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 Şahin Karakoç (“the applicant”), on 16 April 2004.

2. The applicant was represented by Mr M.A. Kırđök, Ms M. Kırđök and Ms M. Hanbayat, lawyers practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 23 January 2007 the Court decided to give notice of the application 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 1957 and lives in İstanbul.

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

6. On 5 July 1993 Başbağlar village in Erzincan was raided by terrorists. They burned numerous houses and killed 33 villagers. The applicant, who was living in the neighbouring village, was suspected of having participated in the so-called “Başbağlar Massacre”.

7. The applicant and twenty other individuals were charged under Article 125 of the Criminal Code.

8. On 24 January 1996 the applicant was arrested and remanded in custody. On 18 February 1997 the İzmir State Security Court ordered his release pending trial.

9. On 23 October 1997 the applicant was acquitted.

10. On 12 February 1999 the applicant lodged a complaint under Law no. 466 with the Bakırköy Assize Court against the Treasury, requesting 1,000,000,000¹ Turkish liras (TRL) in respect of pecuniary damage and TRL 4,000,000,000² for non-pecuniary damage by way of compensation for unjustified detention between 24 January 1996 and 18 February 1997.

11. The Bakırköy Assize Court appointed one of its members as judge rapporteur (*naip hakim*) to investigate the case and draft a report. The applicant was heard by the judge rapporteur on 8 June and 12 October 2000. He stated that he did not have a regular job at the time but was unofficially working for a dairy merchant six months a year, collecting cheese from local farmers, and in return was paid TRL 100,000,000³ per month.

12. On 6 November 2001 the Bakırköy Assize Court found that the applicant's unjustified detention on remand for 384 days qualified for compensation. In its judgment, the court took note of all the complaints set out by the applicant's lawyer, as well as the content of the judge rapporteur's report and the written submissions of the public prosecutor. The court further referred to the minimum wage at the time and the expert report which had estimated the applicant's income loss to be TRL 168,114,000⁴. The court concluded in line with the expert report and awarded the applicant TRL 168,114,000 for pecuniary damage. Considering the applicant's economic and social position, the seriousness of the charges brought against him and the time that he had spent in detention as well as the intensity of his emotional suffering, the court additionally awarded the applicant TRL 1,000,000,000⁵ for non-pecuniary damage.

13. The applicant's lawyer appealed and claimed that the amount of compensation for non-pecuniary damage was insufficient reparation for the wrongful detention of the applicant and the subsequent suffering that he had endured. He further maintained that, considering the length of the proceedings, the compensation for pecuniary damage awarded by the court was not sufficient either. He also complained about the lack of interest on the compensation.

1. About 2,602 euros

2. About 10,410 euros

3. About 1,358 US dollars

4. About 121 euros

5. About 723 euros

14. On 4 March 2002 the Court of Cassation quashed the decision on the ground that the defendant had not been notified of the applicant's claim and had not been invited to submit replies.

15. The case was resumed before the Bakırköy Assize Court. On 18 September 2002 the judge rapporteur heard the applicant who repeated his previous statements and was paid TRL 100,000,000 per month. A new expert report estimated the applicant's income loss, on the basis of the net minimum wages¹ in force at the time, to be TRL 113,266,974².

16. On 21 October 2002 the Bakırköy Assize Court awarded the applicant TRL 113,266,974 for pecuniary damage and TRL 2,000,000,000³ for non-pecuniary damage. The court refused the applicant's claim for interest which was not covered by Law no. 466.

17. On 14 January 2003 the applicant appealed.

18. The written opinion of the Public Prosecutor was submitted to the Court of Cassation and notified to the applicant.

19. On 21 October 2003 the Court of Cassation upheld the decision of the Bakırköy Assize Court, with a minor amendment regarding the costs and expenses.

20. On 5 October 2004 the applicant was paid TRL 2,113,266,974⁴ plus TRL 1,233,300,000⁵ in statutory interest, applied with effect from 21 October 2002.

THE LAW

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

21. 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. He further alleged under the same provision that he had not been afforded a public hearing and had not been notified of the public prosecutor's written opinion, which had denied him the right to a fair hearing.

22. The relevant part of Article 6 § 1 reads as follows:

1. Net 193,422 Turkish liras per day (an average of 2,5 US dollars) between 24 January 1996 and 31 July 1996; net 377,994 Turkish liras per day (an average of 3,9 US dollars) between 1 August 1996 and 31 December 1996; net 389,244 US dollars per day (an average of 3,3 US dollars) between 1 January 1997 and 18 February 1997. An average of approximately 3,2 US dollars per day

2. About 70 euros

3. About 1,234 euros

4. About 1,200 euros

5. About 700 euros

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

A. Admissibility

23. The Government claimed that the application had been lodged by the applicant on 23 April 2004, six months and two days after the final decision of the Court of Cassation. The Government concluded that the application should be declared inadmissible for failure to comply with the six-month rule contained in Article 35 § 1 of the Convention.

24. However, the Court observes that the date mentioned by the Government is in fact the date of registration of the application by the Registry of the Court, whereas the date stamped on the envelope which contained the application forms indicates that it was mailed on 16 April 2004. Consequently, the Court finds that the applicant lodged his application within the six-month time-limit (see *Yıldız and Taş v. Turkey* (no. 4), no. 3847/02, § 22, 19 December 2006).

25. The Court adds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Allegation concerning the length of proceedings

26. The applicant complained of excessive length in the civil proceedings, in breach of the Convention.

27. The Government rejected that claim.

28. The period to be taken into consideration began on 12 February 1999 and ended on 21 October 2003. It thus lasted some four years and eight months for two levels of jurisdiction which produced four judgments.

29. The Court will examine the reasonableness of that period in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

30. As regards the nature of the case, the Court observes that, given that the determination of the claim required expert evidence, it was of a certain complexity.

31. As regards the conduct of the judicial authorities, the Court observes that during the period under consideration the case was examined at two levels of jurisdiction and a total of four judgments were delivered. The first-

instance court based its judgment on two expert reports and the statements of the applicant who was heard on three occasions. The court examined the case file regularly and no inordinate delay in the proceedings occurred in the proceedings. Consequently, the Court considers that the authorities displayed due diligence in handling the applicant's case.

32. In view of the foregoing and having regard to the overall length of the proceedings, the Court finds that there has been no violation of Article 6 § 1 of the Convention as regards the complaint concerning the length of proceedings.

2. Allegation concerning the lack of a hearing

33. According to the applicant, his case required a mandatory oral hearing within the context of adversarial proceedings. He added that the three times he had been heard by the judge rapporteur were for the purposes of collecting information. The absence of the public prosecutor and the defendant had denied him the opportunity to challenge their opinion, in breach of Article 6 § 1.

34. The Government stated that Law no. 466 was intended to provide a speedy means of dealing with compensation claims. Although dispensing with hearings was the rule for such cases, there were exceptions, such as that of the applicant who had been heard by the court and given the opportunity to explain himself on 8 June and 12 October 2000 and 10 September 2002.

35. The Court reiterates that it is a fundamental principle enshrined in Article 6 § 1 that court hearings should be held in public. The public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair hearing, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, pp.11-12, § 21).

36. That said, the obligation to hold a hearing is not absolute (see *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, § 66). There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, for example, *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Pursiheimo v. Finland* (dec.), no. 57795/00, 25 November 2003; *Lundevall v. Sweden*, no. 38629/97, § 39, 12 November 2002; and *Salomonsson v. Sweden*, no. 38978/97, § 39,

12 November 2002). Furthermore, the fact that no members of the public were present at the hearing does not automatically render it not public (see *Galstyan v. Armenia*, no. 26986/03, § 81, 15 November 2007).

37. The Court reiterates that in the *Göç v. Turkey* judgment a similar situation to the present case was examined (see *Göç v. Turkey* [GC], no. 36590/97, § 55, ECHR 2002-V). In considering whether there were any exceptional circumstances which justified dispensing with an oral hearing on the applicant's compensation claim, the Court held that the applicant should have been afforded an opportunity to explain orally to the first-instance court the moral damage which his detention entailed for him in terms of distress and anxiety. According to the Court the administration of justice and the accountability of the State would have been better served by affording the applicant the right to explain his personal situation at a hearing before the domestic court, subject to public scrutiny. The Court concluded that the above factor outweighed the considerations of speed and efficiency on which, according to the Government, Law no. 466 was based.

38. In the instant case it is not disputed between the parties that the applicant was afforded the right to explain his personal situation orally. The Court observes that the Bakırköy Assize Court held in its judgment that the applicant had been heard by the judge rapporteur within the context of a decision delivered by the Court of Cassation on 13 May 1999, which held that claimants in cases of compensation for unjustified detention must be heard in person for a better assessment of their personal and social situation at the time of the events. The Court notes that the applicant was indeed heard by the judge rapporteur three times, twice before the Court of Cassation quashed the judgment and once thereafter.

39. The Court, however, observes that on each occasion the applicant was heard by the judge rapporteur alone, in the absence of the other two judges, the public prosecutor and the defendant party.

40. Consequently, the Court concludes that the circumstances in which the applicant was heard in the instant case did not afford him the right "to explain his personal situation in a hearing before the domestic court subject to public scrutiny" as held in the Court's *Göç* judgment, cited above.

41. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's complaints concerning the lack of a hearing.

3. Allegation concerning the non-communication of the written opinion of the public prosecutor at the Court of Cassation

42. The applicant maintained that the public prosecutor's written opinion concerning the first judgment of the Bakırköy Assize Court had not been served on him; a situation which had denied him the opportunity to reply and thus infringed his right to a fair hearing.

43. The Government contested that argument, submitting that the case had been reviewed afresh after the Court of Cassation quashed the Bakırköy Assize Court's first judgment. Subsequently the public prosecutor's written opinion concerning the new judgment of the former court had been notified to the applicant. The Government asserted therefore that the applicant had been given the opportunity to reply thereto.

44. The Court notes that it has examined similar grievances in the past and has found a violation of Article 6 § 1 of the Convention (see, in particular, *Göç*, cited above, §§ 55-58; *Sağır v. Turkey*, no. 37562/02, §§ 25-27, 19 October 2006; and *Ayçoban and Others v. Turkey*, nos. 42208/02, 43491/02 and 43495/02, §§ 26-28, 22 December 2005). However the instant case differs from the cases mentioned above for the following reasons.

45. The Court notes that, although the applicant was not notified of the public prosecutor's written opinion concerning the former judgment of the Bakırköy Assize Court, this judgment was subsequently quashed by the Court of Cassation on 4 March 2002. Subsequently the applicant was re-heard by the new judge rapporteur and a new expert report was submitted. The applicant's claims were examined afresh by the Bakırköy Assize Court, which made a reassessment of the case and awarded in its later judgment a different amount of compensation. A new written opinion was prepared by the public prosecutor, the content of which was solely based on the Bakırköy Assize Court's latter judgment.

46. The Court notes that, unlike the facts of the case in the *Göç* judgment, the applicant was notified of and given the opportunity to reply to this second written opinion of the public prosecutor (see, *mutatis mutandis*, *Yaşar v. Turkey* (dec.), no. 46412/99, 31 March 2005; *Tarlan v. Turkey* (dec.), no. 31096/02, 30 March 2006; and *Pakkan v. Turkey*, no. 13017/02, §§ 33-34, 31 October 2006).

47. In the light of the foregoing, the Court finds that the applicant's complaint concerning the non-communication of the public prosecutor's written opinion regarding the Bakırköy Assize Court's initial judgment does not disclose a violation of the Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicant complained under Article 13 of the Convention that the compensation amount awarded by the Bakırköy Assize Court was insufficient; therefore Law no. 466 did not provide him with an effective remedy for his unjustified detention.

49. It is the Court's general practice to examine similar complaints under Article 5 § 5 of the Convention, being the *lex specialis* in the matter (*Whitfield and Others v. the United Kingdom*, nos. 46387/99, 48906/99,

57410/00 and 57419/00, § 51, 12 April 2005), which provision reads as follows:

Article 5 § 5

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

50. The Court recalls that, under this provision, the right to compensation for any material or moral damage sustained as a result of a detention is conditional on a breach being found of one of the paragraphs of Article 5, either by a domestic court or by the Convention institutions (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38; and, *mutatis mutandis*, *Talat Tepe v. Turkey*, no. 31247/96, § 79, 21 December 2004).

51. The Court notes in the instant case that the Turkish authorities did not hold that the applicant’s pre-trial detention had been unlawful or otherwise in contravention of the first four paragraphs of Article 5. The court observes that the “unjustified detention” acknowledged by the domestic authorities in the applicant’s case differs in substance from “unlawful detention or arrest” under Article 5 §§ 1 to 4 (*mutadis mutandis*, *N.C. v. Italy* [GC], no. 24952/94, § 57, ECHR 2002-X).

In the instant case the applicant was kept lawfully in detention on remand until his acquittal, which had no effect on the legality question (see, among others, *Van der Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, § 24). In other words the national courts’ finding that the applicant’s detention was not justified as a result of his acquittal does not amount - even in substance - to a finding that Article 5 §§ 1-4 had been breached.

52. In the light of the above and considering, in particular, the fact that the applicant’s complaint before the Court only concerned the insufficiency of the compensation he received under Law no. 466, but not the legality of his detention on remand (*a contrario*, *N.C. v. Italy*, cited above, § 50), the Court considers that Article 5 § 5 of the Convention is not applicable. It therefore follows that this complaint, seen as a whole and requalified, is anyway manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

53. The applicant asserted that he had been unable to work due to the unjustified detention in 1996 whereas the Bakırköy Assize Court had delivered its judgment in 2002 and refused to apply interest from 1996. The applicant added that the authorities had delayed the payment of the compensation awarded by the Bakırköy Assize Court, which had also

caused him to suffer financial loss. He relied on Article 1 of Protocol No. 1, which reads, in relevant part, as follows:

“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.”

Admissibility

54. The Government firstly claimed the applicant could no longer be considered a victim, as the judgment debt had been paid along with statutory interest. The Government added that the applicant had failed to exhaust domestic remedies by not initiating enforcement proceedings.

55. The Court observes that it is not required to decide whether or not the applicant could be considered a victim or to have exhausted domestic remedies, as the application is inadmissible for the reasons stated below.

56. The Court reiterates that in order for the applicant to have a "possession" for the purposes of Article 1 of Protocol No. 1 the judicial decision must become final and enforceable (see *Angelov v. Bulgaria*, no. 44076/98, § 34, 22 April 2004). In the present case the judgment of the first-instance court became final on 21 October 2003. The Court finds that the applicant has not shown that he had a sufficiently established and enforceable claim before that date. He therefore cannot argue that he had a “possession” within the meaning of Article 1 of Protocol No. 1 with regard to his complaint.

57. It follows that the applicant’s complaint under Article 1 of Protocol No. 1 regarding the lack of interest on the pecuniary damage for the period between 1996 and 2002 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

58. As for the applicant’s complaint concerning the authorities’ delay in paying the compensation awarded by the judiciary, the Court reiterates that abnormally lengthy delays in the payment of compensation lead to increased financial loss for the person and to uncertainty, especially when the monetary depreciation which occurs in certain States is taken into account (see *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 29).

59. The Court notes that, in the present case, the greater part of the compensation awarded, together with interest at the rate of 55% *per annum* from 21 October 2002, 30% *per annum* from 1 April 2003 and 15% *per annum* from 1 January 2004, was paid to the applicant on 5 October 2004, that is to say approximately one year after the judgment of the Court of Cassation.

60. The Court observes that according to the calculation method adopted in the judgment of *Akkuş v. Turkey* case (cited above, § 35) on the date of the finalisation of the first-instance court's judgment or within a reasonable period thereafter, the applicant should have received TRL 3,244,745,333. On the date of payment, the amount of full compensation should have been TRL 3,468,264,666. The applicant received TRL 3,396,566,974, which is 97.93% of the full compensation.

61. In the light of the Court's findings in the case of *Arabacı v. Turkey* ((dec.), no. 65714/01, 7 March 2002), the Court considers that such a minor difference (less than 5%) between the above-mentioned amounts can be considered to have resulted from the methods of calculation used by the Court and the national authorities. In these circumstances, the Court is of the opinion that the total amount of money paid to the applicant was satisfactory even if, apparently, it did not constitute full compensation.

62. Consequently, the applicant cannot be regarded as having endured a considerable loss due to the interest rates applied and the deferral of payment.

63. The Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 5,788 new Turkish liras (YTL) (approximately EUR 3,385) in respect of pecuniary damage and EUR 30,000 for non-pecuniary damage.

66. The Government submitted that the amounts claimed were excessive and would lead to unjust enrichment.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further 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 *Mesut Yurtsever v. Turkey*, no. 42086/02, § 23, 19 July 2007).

B. Costs and expenses

68. Referring to a contract signed with the applicant, the applicant's representative claimed YTL 7,800 (approximately EUR 4,560) for 39 hours' legal work, spent for the preparation and presentation of the instant case before the Court. The applicant further claimed YTL 270 (approximately EUR 158) for the costs and expenses incurred before the Court.

69. The Government contended that the applicant's claim was excessive and unsubstantiated.

70. 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, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,000 for costs and expenses.

C. Default interest

71. 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 Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the complaint concerning the length of proceedings;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the complaint concerning the non-communication of the written opinion of the public prosecutor;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint concerning the lack of a hearing;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

6. *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, plus any tax that may be chargeable to the applicant, which sums are to be converted into New Turkish liras at the rate applicable 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 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 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Antonella Mularoni
President