



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

SECOND SECTION

CASE OF SAYA AND OTHERS v. TURKEY

(Application no. 4327/02)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Saya and Others v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 4327/02) 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 eleven Turkish nationals, Mr Şeyho Saya, Mr Hasan Ölgün, Mr Çetin Taş, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Akın Doğan, Mr Nedim Çifçi, Ms Hediye Kiliç, Mr Ali Murat Bilgiç, Mr Bahattin Barış Bilgiç and Ms Zeynep Saya (“the applicants”), on 20 November 2001.

2. The applicants were represented by Mr Şeyho Saya, the first applicant, who is a lawyer practising in Adıyaman. The Turkish Government (“the Government”) were represented by their Agent.

3. On 6 September 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1964, 1969, 1964, 1971, 1961, 1965, 1971, 1975, 1964, 1971 and 1965 respectively, and live in Adıyaman.

5. On 30 April 1999 the Adıyaman Governor authorised the holding of May Day celebrations in the Adıyaman Amphitheatre, located in the Hasancık District.

6. On 1 May 1999 a group of people, including the applicants, gathered in the building of the Health Workers' Trade Union and started to walk towards the amphitheatre for the May Day celebrations. They were stopped by police officers. Stating that they had obtained prior authorisation from the Governor, the group attempted to continue its march. The police then intervened to disperse the group; the applicants were allegedly injured during this incident as a result of the force used by the police. According to the incident report, thirty-eight people, including the applicants, were arrested. The applicants were subsequently taken to the Adıyaman State Hospital, where they were examined by a doctor. The medical reports in respect of Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç stated that there were no signs of ill-treatment on their bodies. As regards the remaining applicants, the following findings were indicated in the respective medical reports:

- *Şeyho Saya*: Tenderness on the back of the right leg and on the back.
- *Çetin Taş*: Tenderness on the lower left side of the chest and pain while breathing. Tenderness and pain on the right side of the forehead. Possible fracture of the ribs on the left side of the chest.
- *Akın Doğan*: Scratches on the back.
- *Ali Murat Bilgiç*: Tenderness and bruises on the left shoulder and the left arm.
- *Bahattin Barış Bilgiç*: Scratches on the right elbow, the right knee and hyperaemia on the left side of the chest.

7. The applicants were then taken into custody. They were released the next day.

8. On different dates in May 1999 the applicants filed criminal complaints with the Adıyaman Public Prosecutor against those police officers who had allegedly used excessive force during their arrest.

9. On 17 June 1999 the Adıyaman Public Prosecutor transferred the case file to the Adıyaman Provincial Administrative Council, seeking authorisation to bring criminal proceedings against the accused officers, pursuant to the provisions of Law on the prosecution of Civil Servants.

10. On 16 February 2000 the Adıyaman Provincial Administrative Council found that there was not enough evidence to initiate criminal proceedings against the accused officers and consequently refused to do so. On 1 September 2000 the applicants appealed against this decision. In their appeal petition, they invoked a breach of Article 11 of the Convention, arguing that the police interference had breached their freedom of assembly. On 14 June 2001 the Supreme Administrative Council upheld the decision of the Administrative Council.

11. In the meantime, on 1 June 1999 the Adıyaman Public Prosecutor, after examining a video recording of the incident, delivered a decision not to prosecute with regard to seventy demonstrators – including the applicants –

who had been involved in the incident on 1 May 1999. In reaching his decision, the Public Prosecutor stated that the demonstrators had been stopped by the police, although they had been walking silently along the pavement, without presenting a danger to the public or engaging in any violent activities. It was also indicated in the decision that, pursuant to section 24 of the Assemblies and Marches Act (Law no. 2911), the police were under an obligation to warn the group out loud to disperse; however, it was observed from the recording of the incident that they had failed to do so. In consequence, the public prosecutor held that the accused had not violated Law no. 2911.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The applicants complained under Article 3 of the Convention that the force used during their arrest was excessive, disproportionate and constituted ill-treatment. Article 3 provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Alleged ill-treatment of the applicants

1. In respect of Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç

13. The Government argued that the applicants Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç could not be considered to be victims in respect of Article 3 as they had no medical reports in support of their allegations.

14. The Court recalls that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, it has generally applied the standard of proof “beyond reasonable doubt” (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

15. In the instant case, the applicants Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç complained that they had been injured as a result of the excessive use of

force by the police to disperse the demonstration. Nonetheless, several elements cast doubt on the veracity of the applicants' claims. The Court observes in the first place that the medical reports dated 1 May 1999 do not indicate any signs of ill-treatment on their bodies. Furthermore, although the applicants were released the day after the incident, they did not submit any further medical reports in support of their complaint or adduce any material which could add probative weight to their allegations. There is therefore nothing in the case file to show that these applicants were injured as alleged during the incident (see *Balçık and Others v. Turkey*, no. 25/02, §§ 24-26, 29 November 2007).

16. In view of the above, the Court concludes that the applicants Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç have not substantiated their claims and this part of the application must therefore be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. In respect of the remaining applicants

17. The Court notes that the Article 3 complaint lodged by Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç 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.

18. As the Court has underlined on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies, making no provision for exceptions and no derogation from it is permissible under Article 15 § 2 (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

19. As stated above, in assessing evidence, the standard of proof "beyond reasonable doubt" is generally applied (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). Further, where allegations are made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 24, § 32).

20. The Court observes that in the present case it is undisputed that the injuries observed on the five applicants, namely Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç, were caused as a result of the use of force by the police during the incident on 1 May 1999. It therefore considers that the burden rests on the

Government to demonstrate with convincing arguments that the use of force was not excessive.

21. The Court notes that, since prior authorisation had been obtained from the Adıyaman Governor to celebrate May Day in the Adıyaman Amphitheatre in the Hasancık District, several police officers were deployed to secure the area. It also notes that the police stopped the group as they were walking along the pavement towards the amphitheatre. Thus, in the particular circumstances of the present case, it cannot be said that the security forces were called upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). The Court further observes that there is no evidence to suggest that the group presented a danger to public order or engaged in acts of violence. In particular, it takes note of the non-prosecution decision, dated 1 June 1999, in which the Adıyaman Public Prosecutor held that the applicants had not violated the Assemblies and Marches Act (Law no. 2911).

22. In these circumstances, the Court finds that the Government have failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used against the applicants, whose injuries are corroborated by medical reports. As a result, it concludes that the injuries sustained by Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç were the result of treatment for which the State bore responsibility.

23. It follows that there has been a violation of Article 3 in respect of Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç.

B. Alleged failure to conduct an effective investigation

24. The applicants maintained that their allegations of ill-treatment were not examined by an independent and impartial authority. In this respect, they invoked Articles 3, 6 and 13 of the Convention.

25. 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.

26. The Court observes that, following the applicants' complaint to the Adıyaman Public Prosecutor, the case file was transferred to the Adıyaman Provincial Administrative Council for the purpose of obtaining authorisation to bring criminal proceedings against the accused officers, pursuant to the provisions of Law on the prosecution of Civil Servants. The Committee concluded that there was no evidence in support of the applicants' allegations and decided in consequence that no criminal proceedings should be initiated against the accused police officers.

27. The Court reiterates its earlier findings in a number of cases that the investigation carried out by the administrative councils cannot be regarded as independent since they are chaired by the governors or their deputies, and composed of local representatives of the executive, who are hierarchically dependent on the governor, an executive officer linked to the very security forces under investigation (see, *inter alia*, *Ipek v. Turkey*, no. 25764/94, § 174, 17 February 2004; *Talat Tepe*, cited above, § 84; *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III). In this regard, the willingness of the investigators to give credence to the accounts offered by their colleagues confirms the Court's previous findings.

28. The Court therefore concludes that the national authorities failed to carry out an effective and independent investigation into the applicants' allegations of ill-treatment.

29. There has accordingly been a procedural violation of this provision.

30. In these circumstances, the Court considers that no separate issue arises under Articles 6 and 13 of the Convention (see *Timur v. Turkey*, no. 29100/03, §§ 35-40, 26 June 2007).

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

31. The applicants alleged that the police intervention in the meeting constituted a violation of their freedom of assembly. In this respect, they relied on Article 11 of the Convention and Article 2 of Protocol No. 4.

32. The Court considers that the applicants' complaints should be examined under Article 11, which provides:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

A. Admissibility

33. The Government asked the Court to dismiss this part of the application, under Article 35 § 1 of the Convention, for failure to exhaust domestic remedies. In this regard, they submitted that the applicants had not relied on the provisions of the Convention in the domestic proceedings. They also stated that the applicants could have brought administrative and/or civil proceedings. Furthermore, the Government argued that this part of the application was not lodged within the six-month time-limit. In their

view, the applicants should have lodged their application with the Court within six months following the date of the incident, that is, 1 May 1999.

34. As regards the first objection, the Court notes that the applicants relied on Article 11 of the Convention in their appeal petition to the Supreme Administrative Court, dated 1 September 2000, and alleged a breach of their right to peaceful assembly. Therefore, this objection cannot be upheld.

35. In respect of the second objection, the Court recalls that similar objections based on the civil and administrative law remedies referred to by the Government have already been examined and rejected (see *Karayığit v. Turkey* (dec.), no. 63181/00, 5 October 2004). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. In conclusion, this objection cannot be upheld either.

36. As regards the objection concerning non-compliance with the six-month time-limit, the Court observes that the applicants lodged their application on 20 November 2001, within six months of the decision by the Supreme Administrative Court. In the Court's view, it was not unreasonable for the applicants to await the outcome of the proceedings against the police officers. Accordingly, this objection must also be dismissed.

37. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference with the exercise of the freedom of peaceful assembly

38. The Government maintained that there had been no interference with the applicants' rights under Article 11 of the Convention.

39. The Court considers that the police intervention and the subsequent arrest of the applicants for participating in the meeting constituted, in itself, an interference with the applicants' rights under Article 11.

2. Whether the interference was justified

40. The Government stated that the meeting in issue had been organised unlawfully. They pointed out that the second paragraph of Article 11 imposed limits on the right of peaceful assembly in order to prevent disorder.

41. The Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate

aims under paragraph 2 and is “necessary in a democratic society” for the achievement of those aims.

42. In this connection, it is noted that the interference in the present case had a legal basis, namely section 22 of the Assemblies and Marches Act (Law no. 2911), and was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. As regards a legitimate aim, the Government submitted that the interference pursued the legitimate aim of preventing public disorder and the Court finds no reason to differ.

43. Turning to the question of whether the interference was “necessary in a democratic society, the Court refers in the first place to the fundamental principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III; *Plattform “Ärzte für das Leben” v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, § 32). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Balçık and Others*, cited above, § 46; *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-....).

44. The Court also notes that States must not only safeguard the right to assemble peacefully, but also refrain from applying unreasonable indirect restrictions upon that right. Finally, it considers that, although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights (see *Djavit An*, cited above, § 57; *Oya Ataman*, cited above, § 36; *Balçık and Others*, cited above, § 47).

45. It appears from the evidence before the Court, in particular from the decision not to prosecute issued by the Adıyaman Public Prosecutor, that the applicants had obtained prior authorisation from the Adıyaman Governor to celebrate May Day in the Adıyaman Amphitheatre. While they were walking along the pavement, the police stopped them and used force to disperse the group, without issuing a prior warning. The applicants were subsequently arrested, but released the following day.

46. The Court also notes from the decision of the Public Prosecutor that the group had not presented a danger to public order, or engaged in acts of violence. In the Court’s view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 46, 18 December 2007).

47. Accordingly, the Court considers that in the instant case the forceful intervention of the police was disproportionate and was not necessary for

the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

48. There has therefore been a violation of Article 11 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicants further alleged a breach of Articles 5 and 6 of the Convention. They argued that their arrest was unlawful and that they had been deprived of their right to legal assistance during their police custody.

50. The Court has examined the applicants' complaints raised under Articles 5 and 6 of the Convention. However, having regard to all materials in its possession, the Court finds nothing in the case file which might disclose any appearance of a violation of these provisions. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicants claimed 50,000 US Dollars each in respect of pecuniary and non-pecuniary damage.

53. The Government contested the claims.

54. The Court considers that the applicants are sufficiently compensated by the finding of a violation of Article 11 of the Convention (see *Oya Ataman*, cited above, § 48). However, as regards the finding of a substantive and procedural violation of Article 3 in respect of five applicants, namely Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç, the Court, ruling on an equitable basis, awards these five applicants EUR 3,000 each in respect of non-pecuniary damage. Furthermore, in respect of Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç, the Court recalls that it has found a procedural violation of Article 3 and ruling on an equitable basis, awards EUR 1,000 to each of these six applicants in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicants also claimed 9,500 new Turkish Liras each for the costs and expenses incurred before the Court. In respect of their claims, they referred to the Istanbul Bar Association's scale of fees.

56. The Government contested this claim, as it was unsubstantiated.

57. 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 are reasonable as to quantum. In the present case, the applicants have not substantiated that they have actually incurred the costs claimed. Accordingly, it makes no award under this head.

C. Default interest

58. 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* inadmissible the complaints concerning the substantial aspect of Article 3 of the Convention in respect of Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç, with regard to the applicants' right to liberty and security (Article 5) and their right to legal assistance (Article 6);
2. *Declares* admissible the remainder of the application;
3. *Holds* that there has been a substantive violation of Article 3 of the Convention in respect of Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç;
4. *Holds* that there has been a procedural violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicants' allegations of ill-treatment;
5. *Holds* that there has been a violation of Article 11 of the Convention;
6. *Holds* that the finding of a violation of Article 11 in itself constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

7. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) each to Mr Şeyho Saya, Mr Çetin Taş, Mr Akın Doğan, Mr Ali Murat Bilgiç and Mr Bahattin Barış Bilgiç; and EUR 1,000 (one thousand euros) each to Ms Zeynep Saya, Mr Hasan Ölgün, Mr Müslüm Atasoy, Ms Zöhre Taş, Mr Nedim Çifçi and Ms Hediye Kiliç in respect of non-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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President