



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

1959 · 50 · 2009

SECOND SECTION

CASE OF GÜROVA v. TURKEY

(Application no. 22088/03)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Gürova v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 22088/03) 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, Mr Mehmet Gürova (“the applicant”), on 6 May 2003.

2. The applicant was represented by Mr E. Yurtalan, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 16 February 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1960 and lives in Ankara.

5. On 17 May 2000 the applicant was arrested on suspicion of membership of an illegal organisation. The same day, the applicant was examined by a doctor, who reported that there was no sign of ill-treatment on his body. On 18 May 2000 he was questioned in police custody in the absence of a lawyer. In his police statement, the applicant admitted that he had had military training in Iran but rejected the allegation that he was a member of an illegal organisation.

6. On 21 May 2000 the applicant was again medically examined by a doctor, who stated that there were no traces of ill-treatment on his body. Subsequently, on the same day, the applicant was brought before the prosecutor and the investigating judge at the Ankara State Security Court,

still in the absence of a lawyer. Before the public prosecutor, the applicant declared that he had been subjected to “psychological torture” in police custody and refuted his police statement. He acknowledged that he had been to Iran but denied having had military training there. The applicant also gave a statement to the investigating judge. He retracted his police statement but did not mention any allegations of ill-treatment or duress. After the questioning was over, the investigating judge remanded the applicant in custody.

7. On 11 July 2000 the prosecutor at the Ankara State Security Court filed an indictment with that court, charging the applicant with the offence of membership of an illegal organisation, namely the *Tevhid-Selam* and its sub-group the *Kudüs Savaşçıları*. A number of other persons were also included in the same indictment and accused of various offences, such as the assassination of a number of prominent journalists and academics in Turkey. According to the prosecutor, the organisation's aim was to establish a religious regime in Turkey similar to that in Iran.

8. On 7 January 2002 the Ankara State Security Court rendered its 152 page-long judgment. The trial court found it established, on the basis of the applicant's police custody statement of 18 May 2000, that he was a member of the illegal organisation. It sentenced him to twelve years and six months' imprisonment under Article 168 of the Criminal Code. In its decision the trial court also examined the applicant's allegation of psychological pressure in police custody. Having regard to the two medical reports drawn up at the time of the applicant's arrest and his release from police custody, which stated that there were no marks of injury on the applicant's body, the court concluded that the applicant had retracted his police custody statement in order to avoid conviction.

9. On 12 November 2002 the Court of Cassation upheld the applicant's conviction. The applicant was released from prison on 10 June 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

10. Relying on Article 6 § 3 (c) of the Convention, the applicant complained that he had been denied the assistance of a lawyer while he was in police custody.

11. 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 also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

12. As regards the merits, the Government maintained that, in assessing whether or not the trial was fair, regard should be had to the entirety of the

proceedings. As the applicant was represented by a lawyer during the proceedings before the State Security Court and the Court of Cassation, his right to a fair hearing had not been violated.

13. The Court observes that it has already examined the same grievance in the case of *Salduz v. Turkey* and found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 ([GC], no. 36391/02, §§ 56-62, 27 November 2008). It has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Salduz* judgment.

14. There has therefore been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

15. The applicant complained under Article 3 that he had been subjected to psychological torture in police custody. Relying on Article 5 § 3 of the Convention, he further complained that he had been held in police custody for a long time. Under Article 6, the applicant alleged that the State Security Court which had tried and convicted him was not an independent and impartial tribunal. He also complained about the length of the proceedings. Finally, the applicant alleged that his conviction, which was based on his visit to Iran, had been in violation of Article 7 of the Convention.

16. However, the Court finds nothing whatsoever 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant requested 40,000 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage. He further claimed EUR 7,500 for legal fees and EUR 500 for costs and expenses. In respect of his claims, the applicant submitted a legal fee agreement.

18. The Government contested the claims.

19. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. In respect of non-pecuniary damage, ruling on an equitable basis, it awards EUR 1,500 to the applicant.

20. The Court further considers that the most appropriate form of redress would be the retrial of the applicant in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see *Salduz*, cited above, § 72).

21. 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, regard being had to the documents in its

possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,000 under this head.

22. 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* admissible the complaint concerning the lack of legal assistance to the applicant while in police custody, and the remainder of the application inadmissible;
2. *Holds* there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1;
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, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President