



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

1959 · 50 · 2009

SECOND SECTION

CASE OF UZUNGET AND OTHERS v. TURKEY

(Application no. 21831/03)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Uzunget and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

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

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 21831/03) 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 fourteen Turkish nationals, Mr Sinan Cem Uzunget, Mr Alaattin Uğraş, Mr Emre Altun, Mr Hikmet Gökçe, Mr Rıza Altuntov, Mr Kazım Savcı, Mr İsmail Temizyürek, Ms Nazime Karakaya, Ms Zeynep Şeker, Ms Leyla Mahi Uğraş, Ms Songül Ergül, Ms Esmâ Seviş, Ms Fatma Özcelik and Mr Hüseyin Bolat (“the applicants”), on 19 June 2003.

2. The applicants were represented by Ms E. Olkun, Mr R. Karaman and Mr Kenan Arslan, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants complained of an unjustified interference with their right to freedom of assembly and unfairness of the criminal proceedings against them in violation of Articles 6, 9, 10 and 11 of the Convention.

4. On 16 April 2007 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1975, 1964, 1982, 1976, 1983, 1978, 1961, 1947, 1955, 1975, 1979, 1953, 1952 and 1976 respectively and live in Ankara.

6. On 31 July 2000 the applicants, together with several other persons, gathered in a public park in Ankara in protest against F-type prisons and the events which had occurred in Bergama Prison (violent clashes had taken place between the detainees and security forces on 27 July 2000). The participants wanted to read out a press statement in order to express their concerns about F-type prisons and the events in Bergama Prison. Police officers warned the crowd over a megaphone that the demonstration was illegal under Law no. 2911 on Meetings and Demonstration Marches. The group ignored the police warning. The police officers then arrested twenty-four persons, including the applicants, and took them into custody. It appears from the newspaper articles submitted by the applicants that the police officers used force in order to disperse the protesters. As a result, some of the protestors were injured and a number of them were arrested by the police officers.

7. According to the arrest report, drawn up and signed by the police officers, the applicants were demonstrating with protest banners in their hands. After having warned them to desist, the police arrested the protesters who continued demonstrating. It was also noted in the arrest report that three police officers, who had been injured during the clash with the demonstrators at the time of the arrest, had had to be taken to hospital. The medical reports stated that the police officers were unfit for work for two days.

8. On 31 August 2000 the Ankara Public Prosecutor filed an indictment with the Ankara Criminal Court of First Instance against the applicants and nine others, charging them with having taken part in a demonstration in a public place, without the permission of the authorities, contrary to Law no. 2911.

9. The applicants alleged that the police officers had been armed during the hearings before the trial court and had verbally harassed the defence lawyers. Moreover, the police officers had obtained a copy of the reports and statements in the case file even though they were not a party to the proceedings. The applicants' request to include these facts in the record of the hearings was dismissed.

10. On 5 July 2001 the Ankara Criminal Court of First Instance acquitted some of the accused but convicted the applicants on the basis of the evidence given by them and by witnesses. The court found that the

applicants had ignored the police warning that their meeting was illegal and that they had to disperse. The police had had to use force in order to arrest the applicants. Furthermore, having examined the applicants' defence submissions, the court considered that the applicants had indirectly confessed to the crime (*tevil yollu ikrar*) by admitting that they had gathered in the park in order to protest against F-type prisons and the events in Bergama Prison. It then sentenced Rıza Altuntov to a fine, taking into account the fact that he was a minor at the time of the incident (seventeen and a half years old), whereas it sentenced the other applicants to one year and three months' imprisonment. It decided to suspend enforcement of the applicants' sentence, under section 6 of Law no. 667, with the exception of Alaattin Uğraş, Sinan Cem Uzunget and İsmail Temizyürek.

11. On 7 March 2002 the applicants appealed to the Court of Cassation against the judgment of the first-instance court. The written opinion of the Chief Public Prosecutor at the Court of Cassation was not transmitted to the applicants.

12. On 19 December 2002 the Court of Cassation upheld the decision of the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. Section 6 of Law no. 647 on the Execution of Sentences reads as follows:

“Anyone who has never been sentenced ... to a penalty other than a fine and is sentenced to ... a fine ... and/or a [maximum] term of one year's imprisonment may have his [her] sentence suspended if the court is satisfied that [the offender], having regard to his [her] criminal record and criminal tendencies, will not reoffend if [the] sentence is thus suspended ...”

14. Section 6 of Law no. 2253 on the Establishment and Rules of Procedure of the Juvenile Courts, as amended by Law no. 4963 of 30 July 2003, provides:

“Criminal cases which concern crimes that normally fall under the jurisdiction of the regular courts and are committed by minors who are not yet eighteen years of age shall be examined by the juvenile courts.”

15. Article 34 of the Constitution provides:

“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. ...

The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.”

16. At the material time section 10 of the Meetings and Demonstration Marches Act (Law no. 2911) was worded as follows:

“In order for a meeting to take place, the governor's office or authorities of the district in which the demonstration is planned must be informed, during opening hours and at least seventy-two hours prior to the meeting, by a notice containing the signature of all the members of the organising board...”

17. Section 22 of the same Act prohibited demonstrations and processions on public streets, in parks, places of worship and buildings in which public services were based. Demonstrations organised in public squares had to comply with security instructions and not obstruct individual movement or public transport. Finally, section 24 provided that demonstrations and processions which did not comply with the provisions of this law would be dispersed by force on the order of the governor's office and after the demonstrators had been warned.

18. Section 16 of Law no. 2559 on the Duties and Powers of the Police provides:

“The police may use firearms:

(a) in self defence, ...

(h) or if a person or a group resists the police and prevents them from carrying out their duties or if there is an attack against the police.”

19. Additional section 6 of Law no. 2559 on the Duties and Powers of the Police provides:

“In cases of resistance by persons whose arrest is necessary or by groups whose dispersal is necessary or of an attack or threat of an attack, the police may use violence to subdue these actions.

Use of violence refers to the use of bodily force, physical force and all types of weapons specified in the law and gradually increases according to the nature and level of resistance and attack in such a way as to restore calm.

In cases of intervention by group forces, the extent of the use of force and the equipment and instruments to be used shall be determined by the commander of the intervening force.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicants complained that they had been denied a fair hearing by the domestic courts. They maintained that they had never been given an opportunity to reply to the written opinion of the Principal Public Prosecutor submitted to the Court of Cassation. Furthermore, the police officers had

impaired the fairness of the proceedings by their intimidating and aggressive acts and the trial judge had ignored that behaviour. Additionally, the applicant Rıza Altuntov claimed that, as he had been a minor at the time of the incident, he should have been tried by a juvenile court. The applicants alleged a violation of Article 6 § 1 of the Convention, which reads as follows:

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

21. The Government contested the applicants' arguments and submitted that the trial had been fair.

A. Alleged breach of the applicants' right to adversarial proceedings

1. Admissibility

22. 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.

2. Merits

23. The Government submitted that the written opinion of the Principal Public Prosecutor was not binding on the Court of Cassation, as it was free to decide on appeals regardless of the Prosecutor's opinion. They further maintained that the applicants or their representatives had had the right to consult the case file and examine the documents. Finally, the Government pointed out that, on account of the recent amendment of 27 March 2003, Article 316 of the Code of Criminal Procedure now provided that the written opinion of the Principal Public Prosecutor of the Court of Cassation must be sent to the parties.

24. The applicants maintained their allegations.

25. The Court notes that it has already examined the same grievance in the case of *Göç v. Turkey* and found a violation of Article 6 § 1 of the Convention ([GC], no. 36590/97, § 58, ECHR 2002-V). In that judgment the Court held that, having regard to the nature of the Principal Public Prosecutor's submissions and to the fact that the applicant had not been 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).

26. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned case.

27. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

B. Alleged unfairness of the proceedings as a result of the police officers' intimidation

28. The applicants alleged that the police officers, who attended the hearings, had impaired the fairness of the proceedings by intimidating the accused. They claimed that the trial judge had ignored these actions and had failed to note them in the record of the hearings.

29. The Government claimed that these allegations were unsubstantiated.

30. The Court notes that the applicants have failed to submit any evidence in support of their allegations. Furthermore, in convicting the applicants, the first-instance court does not seem to have attached any importance to the alleged acts or statements of the police officers but rather to the evidence given by witnesses and the applicants' defence submissions (see paragraph 10 above). In these circumstances, it cannot be said that the trial court was unduly influenced by the alleged conduct of the police officers who attended the hearings.

31. This complaint is therefore manifestly ill-founded and must be rejected in application of Article 35 §§ 3 and 4 of the Convention.

C. The trial of Rıza Altuntov

32. The applicant Rıza Altuntov claimed that, as he had been a minor at the relevant time, he should have been tried by a juvenile court. In his opinion, his trial and conviction by a regular criminal court amounted to a breach of his rights under Article 6 § 1 of the Convention.

33. The Government submitted that Rıza Altuntov had been tried by a regular criminal court in accordance with the domestic legislation then in force. The domestic courts had taken into consideration his age in the course of the trial and had applied the Criminal Code provisions in his favour when deciding the sanction to be imposed on him following conviction.

34. The Court notes that it has not had many cases in which it has considered how this Article 6 § 1 guarantee applies to criminal proceedings against children. It reiterates, however, that Article 6, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial (see *T. v. the United Kingdom* [GC], no. 24724/94, § 83, 16 December 1999). Furthermore, the primary purpose of this provision is to ensure a fair trial by a “tribunal” competent to determine any “criminal charge” on the basis of the rule of law and in compliance with proceedings prescribed by law (see, *mutatis mutandis*, *Magee v. the United Kingdom*, no. 28135/95, § 41, ECHR 2000-VI, and *Belilos v. Switzerland*, 29 April 1988, § 64, Series

A no. 132). Accordingly, it cannot be said that the trial of a minor under the age of eighteen by a regular criminal court, rather than a juvenile court, as such violates the fair trial guarantee under Article 6 § 1.

35. Nevertheless, the Court considers that it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (see *T. v. the United Kingdom*, cited above, § 84).

36. On the above understanding, the Court notes that following the amendments brought in by Law no. 4963 of 30 July 2003, the juvenile courts' jurisdiction in criminal matters extended to minors under the age of eighteen (see paragraph 14 above). However, prior to the aforementioned amendment, the juvenile courts were only competent to try minors under the age of fifteen. Therefore the applicant Rıza Altuntov, who was not considered a minor at the relevant time as he was seventeen and a half years old, was tried by a regular criminal court in accordance with the domestic legislation then in force.

37. However, as is clear from the judgment of the Ankara Criminal Court of First Instance, the trial judge took account of the applicant's age when determining the sanction to be imposed on him and sentenced him only to a fine (see paragraph 10 above). In these circumstances, given that the applicant was effectively represented by a lawyer throughout the criminal proceedings against him and that there was no indication that the applicant, seventeen and a half years old, was unable to understand and participate in the proceedings adequately, the Court does not consider that the applicant's trial by a regular criminal court as such amounted to a breach of his right to a fair hearing under Article 6 § 1 of the Convention.

38. It follows that this complaint is also manifestly ill-founded and must be rejected in application of Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 9, 10 AND 11 OF THE CONVENTION

39. The applicants complained that the interference by the police with the meeting was in violation of their rights to freedom of thought, expression and assembly under Articles 9, 10 and 11 of the Convention.

40. The Court considers that the applicants' complaints should be examined from the standpoint of Article 11 alone, which reads in so far as relevant as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

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 ... public safety [or] for the prevention of disorder...”

A. Admissibility

41. 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

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

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

43. The Court considers that the police intervention and the subsequent conviction 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

44. 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.

45. 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.

46. 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.

47. 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, and *Plattform “Ärzte für das Leben” v. Austria*, 21 June 1988, § 32, Series A no. 139). 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 v. Turkey*, no. 25/02, § 46, 29 November 2007, and *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-....).

48. The Court also notes that States must not only safeguard freedom of peaceful assembly, but must 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 in the exercise of the rights protected, there may also be positive obligations to secure their effective enjoyment (see *Djavit An*, cited above, § 57, and *Oya Ataman*, cited above, § 36).

49. The Court considers that these principles are also applicable with regard to demonstrations and processions organised in public areas. It notes, however, that it is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorisation and regulates the activities of associations (see *Djavit An*, cited above, §§ 66-67).

50. Having regard to the domestic legislation, the Court observes that at the material time no authorisation was required for the holding of public demonstrations; however, notification was required seventy-two hours prior to the event. In principle, regulations of this nature should not represent a hidden obstacle to the freedom of peaceful assembly as protected by the Convention. It goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility. This being so, it is important that associations and others organising demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force (see *Oya Ataman*, cited above, § 38).

51. In the instant case, it appears that the applicants participated in a gathering on 31 July 2000 in a park in order to protest against F-type prisons regime and the violent clashes that had occurred in Bergama Prison. However, police officers intervened in the meeting and asked the participants to disperse (see paragraph 6 above). Since the applicants and other participants did not comply with these orders, the police officers used force to disperse the crowd. It transpires from the parties' submissions that some demonstrators responded violently and turmoil ensued, resulting in the injury of three of the police officers and some protesters (see paragraphs 6 and 7 above).

52. The Court observes that there is no evidence to suggest that the group in question initially presented a serious danger to public order. Nevertheless, it is likely that they would have caused some disruption in a central park in Ankara. It appears that the protestors, including the applicants, wished to draw attention to a sensitive subject concerning the

conditions of detention in prisons and that the gathering was initially peaceful. However, the authorities intervened swiftly with considerable force in order to disperse them, thereby causing tensions to rise, followed by clashes.

53. 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.

54. Accordingly, the Court considers that in the instant case the forceful intervention of the police officers was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention. Finally, the Court observes that the sanction imposed on some of the applicants, namely one year and three months' imprisonment, cannot be considered proportionate in the circumstances of the case (see paragraph 10 above).

55. In view of the above, the Court concludes that there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

56. The applicants further complained, under Article 14 of the Convention, that their conviction constituted discrimination on the ground of their political opinions.

57. The Government contested that argument.

58. Having examined the material submitted to it, the Court considers that there is no appearance of a violation of this provision.

59. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicants each claimed the following amounts for pecuniary and non-pecuniary damage:

– Sinan Cem Uzunget claimed 50,500 euros (EUR) in respect of pecuniary and EUR 100,000 for non-pecuniary damage. He further requested a re-trial by the domestic courts in the event that the Court should find a violation, the deletion of his criminal record and his reinstatement to his post in the public service.

i) Alaattin Uğraş claimed EUR 48,977 in respect of pecuniary and EUR 50,000 for non-pecuniary damage.

ii) İsmail Temizyürek claimed EUR 47,000 in respect of pecuniary and EUR 50,000 for non-pecuniary damage.

iii) The remaining applicants, Rıza Altuntov, Emre Altun, Hikmet Gökçe, Kazım Savcı, Nazime Karakaya, Zeynep Şeker, Leyla Mahi Uğraş, Songül Ergül, Esma Seviş, Fatma Özcelik and Hüseyin Bolat each claimed an award only for non-pecuniary damage in the amount of EUR 10,000.

62. The Government submitted that the amounts claimed in respect of pecuniary and non-pecuniary damage were unsubstantiated. As regards the applicants' claims for non-pecuniary damage, the Government contended that any damage to be awarded should not lead to unjust enrichment.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

64. As to the claims for non-pecuniary damage, the Court considers that the applicants may be taken to have suffered a certain amount of distress in the circumstances of the case. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant EUR 1,000 for non-pecuniary damage.

B. Costs and expenses

65. The applicants each claimed EUR 3,120 for the costs and expenses incurred before the Court.

66. The Government submitted that the amounts claimed were baseless and excessive.

67. 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, the Court notes that the applicants did no more than refer to the Istanbul Bar Association's scale of fees in respect of their legal representative's claims and failed to submit any supporting documents. The Court therefore makes no award under this head (see *Balçık and Others*, cited above, § 65).

C. Default interest

68. 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 the alleged breach of the applicants' rights to adversarial proceedings and to freedom of assembly *admissible* and the remainder of the application *inadmissible*;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the complaint concerning the applicants' rights to adversarial proceedings;
3. *Holds* that there has been a violation of Article 11 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President