



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

1959 · 50 · 2009

SECOND SECTION

CASE OF YEŞİLYURT AND TUTAR v. TURKEY

(Application no. 8296/05)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

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 Yeşilyurt and Tutar 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 8296/05) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr Tayyar Yeşilyurt and Mr Ramazan Tutar (“the applicants”), on 11 January 2005.

2. The applicants were represented by Mr A. Terece, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 27 March 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 applicants were born in 1984 and 1985 respectively and live in İzmir.

5. On 30 March 2004 the applicants quarrelled with S.C. As the quarrel turned into a fight, a certain M.C. intervened to stop them and he was stabbed by the second applicant. On 31 March 2004 the police took the statements of the parties, including the applicants.

6. On 8 April 2004 the İzmir public prosecutor filed an indictment against the applicants with the İzmir Magistrates' Court for the alleged assault with a knife, occasioning actual bodily harm. He requested that the applicants be sentenced pursuant to Article 456 § 4 of the Criminal Code. The indictment was not served on the applicants.

7. On 28 April 2004 the İzmir Magistrates' Court, without holding a hearing, issued a penal order and found the applicants guilty as charged. The court fined the applicants to 445,616,000 Turkish liras (TRL) (equivalent to 268 euros (EUR)) and TRL 594,154,000 (equivalent to EUR 357) respectively. In doing so, it relied on the “simplified procedure” stipulated in Article 386 of the Code of Criminal Procedure for relatively minor offences.

8. On 15 July 2004 the İzmir Criminal Court dismissed the applicants' objection, without holding a hearing.

9. On 6 December 2004 the first applicant paid TRL 618,000,000 (equivalent to EUR 330) including interests. The second applicant has not paid the fine.

THE LAW

10. The applicants complained under Article 6 § 1 of the Convention that they had been unable to defend themselves in person or through legal assistance, as there had been no public hearing in their case. They further stated that the indictment of the public prosecutor had not been served on them. In this respect, they complained that they had been denied adequate time and facilities for the preparation of their defence and the possibility of submitting counter arguments and evidence, including the examination of witnesses, in breach of Article 6 § 3 (a), (b) and (d) of the Convention.

11. Referring to the case of *Şentuna v. Turkey* ((dec.), no. 71988/01, 25 January 2007), the Government maintained that the second applicant, Mr Ramazan Tutar, cannot claim to be a victim of a violation of Article 6 of the Convention as he has not yet paid the fine ordered by the penal order. The Court observes that in the *Şentuna* case, following the conviction of the applicant by a penal order, there was a retrial and at the end of these proceedings the applicant was acquitted of the charges against him and his conviction was erased from the judicial records. As a result, in the present case, the Government's objection in respect of the second applicant cannot be upheld.

12. The Court notes that 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.

13. As regards the merits, firstly, the Court considers that, in the instant case, it is more appropriate to deal with the applicants' complaints under Article 6 § 1 globally due to the overlapping nature of the issues and since the sub-paragraphs of Article 6 § 3 may be regarded as specific aspects of the general fairness guarantee of the first paragraph.

14. The Court further recalls that, in a judgment delivered on 30 June 2004, the Constitutional Court unanimously declared

Article 390 § 3 of the former Code of Criminal Procedure unconstitutional, null and void, holding that depriving individuals of a public hearing was in violation of the right to a fair trial. Furthermore, with the new Criminal Code and the Code of Criminal Procedure, which came into force on 1 June 2005, the practice of issuing penal orders ceased to exist.

15. However, in the present case, in accordance with the relevant domestic law prevailing at the time of the events, no public hearing was held during the applicants' trial. Both the Izmir Magistrates' Court, which issued the penal order and fined the applicants, and the Izmir Criminal Court, which examined their objection, took their decisions on the basis of the documents in the case file. The applicants were not given the opportunity to defend themselves in person or through a lawyer before the courts which determined their case.

16. The Court reiterates that it has already examined the same grievance in the several similar cases and found a violation of Article 6 § 1 of the Convention (*Piroğlu and Karakaya v. Turkey*, nos. 36370/02 and 37581/02, 18 March 2008; *Dağlı v. Turkey*, no. 28888/02, 27 November 2007; *Karahanoğlu v. Turkey*, no. 74341/01, 3 October 2006; *Mevlüt Kaya v. Turkey*, no. 1383/02, 12 April 2007; *Taner v. Turkey*, no. 38414/02, 15 February 2007). It has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned judgments.

17. In view of the above, the Court concludes that, regardless of whether the second applicant has paid the fine or not, the procedure followed by the judicial authorities prevented both applicants from exercising their defence rights properly and thus rendered the criminal proceedings unfair.

18. Consequently, there has been a violation of Article 6 § 1 of the Convention.

19. Concerning just satisfaction, the applicants claimed EUR 275 and EUR 450 respectively, in respect of pecuniary compensation. They further requested EUR 1,500 each in respect of non-pecuniary damage. Finally, the applicants each claimed EUR 1,500 in respect of legal fees. In this connection, they submitted two invoices from their lawyer each amounting to TRY 2,700 ¹(equivalent to EUR 1,250).

20. As regards pecuniary damage, the Court observes that on 6 December 2004 the first applicant paid the fine of TRL 618,000,000 (equivalent to EUR 330) including interests. In this connection, it notes the causal link between the violation of Article 6 § 1 of the Convention and the first applicant's obligation to pay the fine (see, *Mevlüt Kaya*, cited above, § 28). Considering that the first applicant accordingly suffered pecuniary damage, it awards him EUR 330 in respect of pecuniary damage.

¹ On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000.

21. Moreover, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicants.

22. Furthermore, deciding on an equitable basis, the Court awards the applicants EUR 1,000 each for costs and expenses.

23. Finally, 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicants;
4. *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, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 330 (three hundred and thirty euros) to the first applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) to each of the applicants plus any tax that may be chargeable to them, 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President