



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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISIBILITY OF

Application no. 43517/02
by Mehmet Sait KAYA
against Turkey

The European Court of Human Rights (Second Section), sitting on 20 September 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEŒ,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above application lodged on 7 November 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mehmet Sait Kaya, is a Turkish national who was born in 1963 and lives in İzmir. He is represented before the Court by Mr B. Özdemir, a lawyer practising in İzmir.

A. The circumstances of the case

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

On 11 September 2001 a person who engaged the applicant as a repairman, filed a complaint with the Urla Public Prosecutor alleging that he had been menaced by the applicant. The Public Prosecutor took the statements of the complainant's witnesses.

On 12 October 2001 the applicant gave statements at the Urla Police Station, where he denied all allegations against him.

On 6 November 2001 Urla Public Prosecutor imposed a fine of 142,665,600¹ Turkish liras on the applicant for menacing others (*sair tehdidat*), in accordance with Articles 119 and 191 of the Criminal Code. This order was notified to the applicant on 6 December 2001.

Since the applicant failed to pay the fine within ten days, as required by the payment order, on 28 December 2001, the public prosecutor filed an indictment with the Urla Criminal Court, charging the applicant under Articles 119 and 191 of the Criminal Code.

On 20 June 2002, the Urla Magistrate's Court delivered a criminal decree (*ceza kararnamesi*), sentencing the applicant to a penalty of TRL 213,548,400². However, considering his clean record, the court decided to defer the applicant's sentence.

On 19 July 2002 the applicant filed an objection against the criminal decree. Besides disputing the facts of the alleged incident, he maintained that he had been deprived of the guarantees of a fair trial before the Urla Magistrate's Court, provided by Article 6 of the Convention. He argued, in particular, that as the court decided on the case-file, he was deprived of his right to defend himself, submit evidence, put questions to the witnesses and have witnesses on his behalf heard by the court. He also complained of the fact that the court decided on the witness statements previously taken by the Public Prosecutor, rather than questioning them itself.

On 26 July 2002 Urla Assize Court confirmed the facts of the incident as presented by the complainant and dismissed the applicant's objection without making any remarks concerning the fairness of procedure.

B. Relevant domestic law

The Criminal Code provides as relevant:

Article 119:

(...)

No legal investigation would be initiated against the offender, provided that the above mentioned payments, together with the charges, are paid within ten days following the notification of the Public Prosecutor;

¹ Equivalent to approximately 103 euros at the time of the events.

² Equivalent to approximately to EUR 162 euros at the time of the criminal decree.

When the case is transferred to court, if the accused pays within 10 days, the sum calculated according to the provisions of this article, the case would be struck out of the list.

Article 191:

The person who menaces someone with threats of causing harm, will be sentenced to six months of imprisonment. (...)

In case of other types of threats the fine is five thousand and four hundred Turkish liras. No investigation would be initiated unless the injured party files a complaint.

COMPLAINTS

The applicant complained that the fine ordered by the public prosecutor and its approval by the criminal courts, with no possibility of an effective appeal to the Court of Cassation had deprived him of his right to a “tribunal” for the purposes of Article 6 § 1 of the Convention.

Moreover, the applicant complained under Article 6 § 3 (b), (c) and (d) of the Convention that he did not have adequate time and facilities for the preparation of his defence and he had not been allowed to defend himself in person. Furthermore, he contended that he had been deprived of his right to examine witnesses against him and to obtain the attendance and examination of witnesses on his behalf.

The applicant also contended that his inability to challenge the criminal decree before a higher court is in breach of Article 2 of Protocol 7 to the Convention.

THE LAW

1. The applicant complains that he did not have access to court within the meaning of Article 6 of the Convention as he did not have access to a higher court to review his fine ordered by the public prosecutor and approved by the criminal courts. Furthermore he complains under Article 6 § 3 (b), (c) and (d) of the Convention that he did not have adequate time and facilities for the preparation of his defence, he had not been allowed to defend himself in person and he had been deprived of his right to examine witnesses against him. Article 6 provides as relevant:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the

parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant complains that he was deprived of his right to have his sentence reviewed by a higher tribunal in violation of Article 2 of Protocol 7 to the Convention, which provides as follows:

"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

The Court notes that, as Turkey has not ratified Protocol No. 7, this complaint is incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning his right to a fair hearing;

Declares the remainder of the application inadmissible.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President