

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

SECOND SECTION

DECISION

Application no. 19508/05
Ayşe Mine BALKANLI
against Turkey

The European Court of Human Rights (Second Section), sitting on 26 March 2013 as a Committee composed of:
Dragoljub Popović, *President,*
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*
Having regard to the above application lodged on 20 May 2005,
Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Ayşe Mine Balkanlı, is a Turkish national who was born in 1979 and lives in İzmir. She was represented before the Court by Mr M. Sürücü, a lawyer practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

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

On 26 December 1995 the applicant was arrested on suspicion of aiding and abetting an illegal organisation.

Between 5 January and 15 October 1996 she was detained pending trial.

On 28 November 2000 the Izmir State Security Court acquitted the applicant of the criminal charges brought against her.

On 28 February 2001 the applicant lodged a case with the Izmir Assize Court requesting compensation pursuant to Law No. 466 for her detention between 26 December 1995 and 15 October 1996.

On 23 September 2002 the court awarded the applicant TRL 5,000,000,000 (TRY 5,000)[1] for non-pecuniary damage and rejected her claim for compensation for pecuniary damage and interest.

On 2 April 2003 the Court of Cassation quashed the judgment of the first-instance court finding that the awarded amount had been excessive.

Following the remittal of the case, on 30 September 2003 the first-instance court reduced the amount of non-pecuniary compensation to TRL 4,000,000,000 (TRY 4,000). In its judgment, the court, once more, dismissed the applicant's additional claims.

On 22 November 2004 the Court of Cassation upheld the judgment with a final decision.

On 20 April 2005 the compensation awarded by the judicial authorities was paid to the applicant who received TRY 4,000.

Before the Court, relying on Article 6 §§ 1 and 3 of the Convention, the applicant alleged that she had been denied a fair hearing in the criminal proceedings brought against her. Under the same heads, she further alleged that the length of her detention in police custody and pending trial, as well as of the criminal proceedings had been excessive.

Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained that the domestic court failed to hold an oral hearing in the course of the compensation proceedings and even so, it had not concluded the proceedings within a reasonable time. The applicant further complained that the compensation awarded by the domestic courts had not been adequate to remedy her grievances, which rendered the domestic remedy under the Law no. 466 ineffective.

Lastly, the applicant contended under Article 1 of Protocol No. 1 that due to the non-application of default interest, the sum awarded in her favour had depreciated its value in the face of high inflation during the proceedings.

On 18 January 2011 the Court decided to communicate to the Government the complaints under Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention concerning the lack of an oral hearing in the proceedings brought pursuant to Law no. 466 and the applicant's right to peaceful enjoyment of her possessions.

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

THE LAW

A. The complaint concerning the lack of an oral hearing

The applicant complained under Article 6 § 1 of the Convention that she had been denied an adversarial trial in the proceedings concerning the determination of compensation for unjustified detention under Law no. 466 on account of the lack of an oral hearing.

After unsuccessful friendly-settlement negotiations, by letter dated 12 June 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application under Article 6 § 1 concerning the lack of an oral hearing. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "Le Gouvernement de République de Turquie offre de verser à la requérante, M. Balkanlı, la somme de 1 000 EUR (mille euros) couvrant tout préjudice matériel et moral, plus tout montant pouvant être dû à titre d'impôt par la requérante, somme qu'il considère comme appropriée à la lumière de la jurisprudence de la Cour.
>
> Cette somme sera convertie en livres turques au taux applicable à la date du paiement, et exempte de toute taxe éventuellement applicable. Elle sera payée dans les trois mois suivant la date de la notification de la décision de la Cour rendue conformément à l'article 37 § 1 de la Convention européenne des droits de l'homme. A défaut de règlement dans ledit délai, le Gouvernement s'engage à verser, à compter de l'expiration de celui-ci et jusqu'au règlement effectif de la somme en question, un intérêt simple à un taux égal à celui de la facilité de prêt marginal de la Banque centrale européenne, augmenté de trois points de pourcentage. Ce versement vaudra règlement définitif de l'affaire.
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> Le Gouvernement considère qu'à la lumière de la jurisprudence bien établie de la Cour *(Göç c. Turquie* [GC], n° 36590/97, 11 juillet 2002; Karakoç c. Turquie, n° 19462/04, 29 Avril 2008) l'absence d'audience dans le cadre de la procédure interne engagée sur la base de la loi n° 466 méconnaît l'article 6 § 1 de la Convention. II invite respectueusement la Cour à dire qu'il ne se justifie plus de poursuivre l'examen de la requête et à la rayer du rôle conformément à l'article 37 de la Convention."

In a letter of 20 July 2012 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI), *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007.

The Court has established in a number of cases against Turkey, its practice concerning the complaint relating to the lack of an oral hearing in proceedings under Law no. 466 (see, for example, *Göç v. Turkey* [GC], no. 36590/97, ECHR 2002-V, and *Şahin Karakoç v. Turkey*, no. 19462/04, § 41, 29 April 2008).

Having regard to the nature of the submission contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

It should therefore be struck out of the list in accordance with Article 37 § 1 (c) of the Convention.

B. The complaint concerning the right to peaceful enjoyment of possessions

The applicant contended under Article 1 of Protocol No. 1 that due to the non-application of default interest, the sum awarded in her favour had depreciated its value in the face of high inflation during the proceedings.

The Court notes that this complaint concerns in fact the outcome of the domestic proceedings and assessment of the judicial authorities. However, the Court cannot itself assess the facts which have led a national court to adopt one decision rather than another; otherwise, it would be acting as a court of fourth instance.

It notes also that the proceedings became final with the Court of Cassation's decision on 22 November 2004 and that the compensation awarded was paid on 20 April 2005 with around five months delay. Based

on the calculation method adopted in the judgment of *Akkuş v. Turkey* case (9 July 1997, § 35, *Reports of Judgments and Decisions* 1997-IV), the Court notes that on the date of the finalisation of the first-instance court's judgment, the applicant should have received TRL 4,000,000,000. (TRY 4,000) On the date of payment, the amount of full compensation should have been TRY 4,080. The applicant received TRY 4,000 which is approximately 99.98 % of the full compensation.

In the light of the Court's findings in the case of *Arabacı v. Turkey* ((dec.), no. 65714/01, 7 March 2002), the Court considers that such a minor difference (less than 5%) between the above-mentioned amounts can be considered to have resulted from the methods of calculation used by the Court and the national authorities. In these circumstances, the Court is of the opinion that the total amount of money paid to the applicant was satisfactory even if, apparently, it did not constitute full compensation (see *Şahin Karakoç,* cited above, § 61)."

In view of the above, the Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

C. Remaining complaints

The applicant complained that her detention in police custody and on remand had been unlawful and unreasonably lengthy. The applicant further complained under Articles 6 § 1 and 13 of the Convention that the criminal proceedings against her had been unfair. She also alleged that the both criminal proceedings and the proceedings she brought in request for damages for illegal detention pursuant to Law no. 466 lasted for an excessive period of time. She finally complained under Article 1 of Protocol No. 1 that the compensation awarded by the domestic courts had been inadequate to remedy her grievances as her request for pecuniary damages and request for application of legal rate of interest was dismissed

In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases, in accordance with Article 37 § 1 (c) of the Convention, in so far as it relates to the complaint concerning the lack of an oral hearing in proceedings brought under Law no. 466;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President