

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

SECOND SECTION

CASE OF BAYGELDİ v. TÜRKİYE

(Application no. 2577/19)

JUDGMENT

STRASBOURG

9 July 2024

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Baygeldi v. Türkiye,

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

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 2577/19) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 December 2018 by a Turkish national, Mr Sedat Baygeldi ("the applicant"), who was born in 1996 and lives in Diyarbakır and who was represented by Mr Y. Muratakan, a lawyer practising in Diyarbakır;

the decision to give notice of the complaint concerning the right to a fair trial on account of the applicant's alleged inability to question the victim S.B. in person to the Turkish Government ("the Government"), represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare the remainder of the application inadmissible;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 18 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged unfairness of criminal proceedings on account of the applicant's alleged inability to question the victim S.B., whose statements were the decisive evidence used by the trial court to convict him.

2. On 29 April 2016 the Diyarbakır Assize Court ("the trial court") sentenced the applicant to life imprisonment for undermining the unity of the State and the integrity of the country under Article 302 § 1 of the Criminal Code ("the CC") and to seventeen years and six months' imprisonment for aggravated robbery under Article 149 § 1 of the CC for his part in the setting up of a roadblock on the Kulp-Lice highway in Diyarbakır by members of the PKK (the Workers' Party of Kurdistan) on 19 September 2015.

3. The trial court relied in its judgment mainly on the incriminating statements which the victim S.B. had made before the Ergani Criminal Court of First Instance following a request from the trial court for him to give evidence there. S.B. had made statements incriminating the applicant in which he had identified him from photographs. S.B. had stated that terrorists

had taken his car and had given it to the applicant, who had been wearing civilian clothes; that the applicant had taken the car away after having been directed to do so by a terrorist; and that after twenty minutes the applicant had come back in another car. Based on these statements, the trial court found that the applicant had been one of the people who had blockaded the Kulp-Lice highway on 19 September 2015 and that he had taken S.B.'s car away and had come back twenty minutes later in another car. The trial court further found, when giving reasons for finding him guilty under Article 302 § 1 of the CC, that he had also been involved in another roadblock on 17 September 2015, the main evidence of which had been video footage given anonymously to the police officers. However, the operative provisions of the judgment convicting the applicant under Article 302 § 1 of the CC referred only to the incident of 19 September 2015.

4. Throughout the criminal proceedings the applicant denied all accusations, stating that on 18 September 2015 PKK members had stopped him on the highway in question and had taken his driving licence, that they had stopped him for a second time on 19 September 2015 and that he had then tried to retrieve his driving licence. He admitted that he had been one of the people seen in the video of the events of 17 September 2015, asserting that he had been warning another driver about the roadblock in order to ensure road safety.

5. During the trial, on 12 February 2016 S.B. submitted a petition to the trial court seeking to retract his statements incriminating the applicant.

6. On 15 March 2016 the applicant's lawyer's request to have S.B. examined in the applicant's presence was rejected by the trial court on the grounds that it would not affect the outcome of the case.

7. On 17 January 2017 the Court of Cassation, referring to S.B.'s statements, upheld the applicant's conviction.

8. On 3 July 2017 the applicant lodged an individual application with the Constitutional Court, alleging that his right to examine S.B. directly had been breached.

9. On 19 June 2018 the Constitutional Court examined the applicant's complaint from the standpoint of the right to a reasoned judgment and declared it inadmissible as manifestly ill-founded. On 27 June 2018 that decision was served on the applicant.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

10. The applicant complained under Article 6 of the Convention that he had not had a fair trial on account of his inability to examine S.B. in person. The applicant took the view that the fact that a person resided in another

district could not in and of itself be regarded as a good reason for his or her non-attendance at trial. Ergani is a district fifty-five kilometres away from Diyarbakır and there was no terrorist activity on the road between Ergani and Diyarbakır at the material time. Neither the applicant nor his lawyer had been informed of the date and time of the hearing at which S.B. gave the sole evidence on which the applicant's conviction rested.

A. Admissibility

11. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

12. The general principles with regard to complaints relating to the examination of absent witnesses and the use by the courts of the evidence given by those witnesses may be found in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015), and *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; see also *Faysal Pamuk v. Turkey*, no. 430/13, §§ 44-50, 18 January 2022 for a concise summary of those principles).

13. The Court will therefore apply the three-pronged test formulated in its case-law referred to above and will examine:

(i) whether there was a good reason for the non-attendance of S.B. at the trial;

(ii) whether the evidence given by S.B. was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard; and

(iii) whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured as regards the evidence given by S.B.

1. Whether there was a good reason for the non-attendance of S.B. at the trial

14. In the present case, S.B.'s statements were taken by a different court located in Ergani district of Diyarbakır city, instead of by the trial court located in the central district of the same city. The Court observes that the trial court gave no reasoning for its decision dated 27 October 2015 to send the letter of request to the Ergani Criminal Court of First Instance.

15. According to the Government's submissions, there were two reasons for the non-attendance of S.B. at the trial: (i) his place of residence being outside the jurisdiction of the trial court, and (ii) the PKK's ongoing terrorist acts in the South-eastern region of Türkiye at the material time.

16. Despite the Government's argument to the contrary, the Court has already held in *Faysal Pamuk* (cited above, § 55) that the fact that a witness did not reside in the city where proceedings are being conducted is not of itself a sufficient reason to justify his or her absence from the trial. Accordingly, it considers that the same considerations as in *Faysal Pamuk* hold true all the more in the present case, where S.B. gave his evidence to a court located in a different district of Diyarbakır city rather than to the trial court located in the same city.

17. The Court also notes that the Government's argument as to the alleged terrorist activities of the PKK in Diyarbakır at the material time was not substantiated as no concrete information was provided in this respect. In any event, the trial court's decision did not contain any indication of such disruption.

18. In view of the above, the Court considers that it has not been shown that the domestic courts had good reasons not to secure the attendance of S.B. at the trial (compare also *Faysal Pamuk*, cited above, § 58).

2. Whether the evidence of S.B. was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard

19. The Government asserted that S.B.'s statements had not been the sole or decisive evidence leading to the applicant's conviction, and had not even been a significant element given that there was other evidence such as a video recording of the incident of 17 September 2015, a report analysing that video record and a police report indicating that the road had been blockaded by PKK members on 19 September 2015. The Government also argued that the applicant's statements had been consistent with S.B.'s statements.

20. The Court notes that the domestic courts' decisions contain no assessment of the weight to be given to the evidence of S.B. It will therefore proceed with its own assessment on this point.

21. The Court observes that, as to evidence, the trial court's findings concerning the applicant's conviction under Article 149 § 1 the Criminal Code ("the CC") referred, at least to a decisive degree, to S.B.'s statements incriminating the applicant (see paragraph 3 above).

22. The Court further observes that, in its reasons for finding the applicant guilty of the offence under Article 302 § 1 of the CC, the trial court appears to have taken into account not only the incident on 19 September 2015 but also the incident on 17 September 2015. However, it transpires from the operative provisions of its judgment that the trial court sentenced the applicant exclusively for the incident on 19 September 2015, in respect of which the sole evidence was S.B.'s incriminating statements (see paragraph 3 above). Even assuming that the applicant's conviction under Article 302 § 1 of the CC also rested on the incident on 17 September 2015, this does not alter the conclusion that the statements made by S.B. had been decisive evidence in the conviction of the applicant under that provision.

3. Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured

23. The Court has already concluded that the hearing of witnesses in courts of their places of residence – instead of having them give evidence in the court of trial – is not capable of operating as a procedural safeguard in the absence of good reasons for the non-attendance of those (absent) witnesses, and that a trial court should not have recourse to that solution without considering alternative measures for obtaining evidence from them (see *Faysal Pamuk*, cited above, §§ 70-71).

24. In the present case, there is no reason to depart from the conclusions reached in *Faysal Pamuk*, since there was no good reason for the absence of S.B. from the trial and no consideration was given to alternative measures, which could have limited the restriction of the rights of the defence to what was strictly necessary.

25. The Government submitted that the trial court had approached the evidence given by S.B. with particular caution and that the investigative authorities had carried out an inquiry as to the veracity of his statements. They also asserted that the applicant had been afforded procedural safeguards compensating for the alleged lack of opportunity to confront S.B. in person at the trial. They stated in particular that:

(i) all the evidence, including S.B.'s statements, had been read out and accessible to him at the trial;

(ii) the applicant had been able to make his defence submissions, to submit his version of the facts and to have his witness M.Ş. heard before the trial court; and

(iii) the identity of S.B. had been known to the applicant.

26. The Court observes that, contrary to the Government's arguments, the trial court neither approached the evidence given by S.B. with any particular caution nor was it aware that S.B.'s evidence carried less weight because he had been examined by a court other than the trial court and in the absence of the applicant and his lawyer (compare also *Süleyman v. Turkey*, no. 59453/10, § 89 *in fine*, 17 November 2020 with further references). This was particularly important given that during the trial S.B. retracted the statements he had made earlier (see paragraph 5 above). The Court of Cassation and the Constitutional Court also failed to scrutinise this issue.

27. Furthermore, an in-person confrontation was of a crucial importance in the present case, with a view to testing S.B.'s evidence and verifying the applicant's alleged actions during the incident on 19 September 2015.

28. In view of the above, the Court cannot find that the certain other factors perceived by the Government as counterbalancing factors were such as to remedy the prejudice stemming from the applicant's inability to be present when S.B. gave his evidence in person in order to challenge it.

29. Accordingly, the Court concludes that the applicant was not afforded proper safeguards commensurate with the nature of his complaints and the

importance of what was at stake for him, namely life imprisonment and an additional term of imprisonment of seventeen years and six months. Such procedural safeguards required him to be able to sufficiently test the reliability and truthfulness of the evidence given by the witness S.B. in line with the guarantees of a fair trial under Article 6 of the Convention (compare also *Süleyman*, cited above, § 102).

30. There has therefore been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage, EUR 100,000 in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses. He did not submit any documents in support of his claims.

32. The Government contested those claims, considering them unfounded and, in any case, excessive.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As for non-pecuniary damage, the Court considers that, having regard to the particular circumstances of the case, its finding of a violation of Article 6 §§ 1 and 3 (d) of the Convention constitutes in itself sufficient just satisfaction and makes no award under this head. It reiterates that the most appropriate form of redress would be a retrial in accordance with the requirements of Article 6 of the Convention, should the applicant so request (see *Daştan v. Turkey*, no. 37272/08, § 44, 10 October 2017).

34. As regards costs and expenses, the Court observes that the applicant has failed to submit any documentation in support of his claims and so rejects his claims for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President