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

FOURTH SECTION

CASE OF GÖÇ v. TURKEY

(*Application no. 36590/97*)

JUDGMENT

STRASBOURG

9 November 2000

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
11 July 2002

In the case of Göç v. Turkey,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 6 April and 19 October 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 36590/97) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Mehmet Göç ("the applicant"), on 28 April 1997.

2. The applicant, who had been granted legal aid, was represented by Mr Güney Dinç, a lawyer practising in İzmir (Turkey). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged, in particular, that he was ill-treated in custody and that he was denied a fair hearing on the determination of his claim for compensation.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 §1 of the Convention) was constituted in accordance with Rule 26 § 1 of the Rules of Court.

6. By a decision of 14 October 1999, the Chamber communicated the applicant's complaints under Articles 3 and 6 of the Convention and declared the remainder of the application inadmissible. By a further decision of 6 April 2000, the Chamber declared the applicant's complaint under

Article 3 inadmissible and retained his complaint under Article 6 for examination on the merits.

7. The applicant alone filed observations on the merits (Rule 59 § 1).The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

9. At the material time the applicant was employed as a clerk in the İzmir 2nd Court of Taxation. On 18 July 1995 the İzmir Civil Court of General Jurisdiction forwarded the name and workplace of the applicant to the İzmir Public Prosecutor's Office, stating that the applicant was suspected of having stolen and falsified court documents relating to a decided divorce case.

10. On 25 July 1995 the Office of the Public Prosecutor referred the case to the Security Directorate.

11. At 5.10 p.m. on 26 July 1995 the applicant was taken into police custody and detained at the İzmir Security Department. He was accused of the above charges. The applicant gave a statement in which he denied that he had been involved in the incident relating to the court's case file. The applicant claims that he was not permitted to contact his family or consult a lawyer. He alleges that he was insulted and beaten for two hours.

12. Two other suspects were also detained and statements were taken from them. A statement was also taken from Adilye Bilecen, a party to the divorce proceedings.

13. On 27 July 1995 an investigation record was drawn up for the applicant and the two other suspects. At 5.00 p.m. on the same day the applicant was released pursuant to the decision of the public prosecutor. The two other suspects were kept in custody.

14. In the evening of 27 July 1995, following his release, the applicant went to the İzmir State Hospital. He was subsequently granted four days' sick leave by his employer. The medical report prepared at the hospital referred to the fact that the applicant was suffering from a common skin disease caused by the inflammation of the roots of his facial hair.

15. On 31 July 1995 the Office of the Public Prosecutor of Karşıyaka decided not to bring charges against the applicant (*takipsizlik kararı*) on the ground of lack of evidence. The decision was served on the applicant on 19 August 1995.

16. The public prosecutor took a statement from the applicant on 28 August 1995. In this statement the applicant stated that he had applied to the Ministry of Justice to have proceedings brought against the individual who had reported him to the authorities.

17. On 29 August 1995 the public prosecutor decided not to lay charges against the person named by the applicant.

18. On 5 September 1995 the applicant filed a complaint under Law No. 466 with the Karşıyaka Assize Court (*Ağır Ceza Mahkemesi*) against the Treasury requesting TRL 200,000,000 by way of compensation for his detention between "24 and 27 July 1995". In the petition, the applicant's lawyer stated, *inter alia*, that the applicant, while in detention, had been tortured and ill-treated by being beaten and insulted for two hours and deprived of his right to contact his family and a lawyer. As a result of his injuries, the applicant was required to take four days' sick leave. He did not invoke any specific section of Law. no. 466.

19. On 14 September 1995 the three-judge Karşıyaka Assize Court commissioned one of its members (*naip hakim*) to investigate the case and draft a report. The judge designated for this purpose verified, *inter alia*, that the Office of the Public Prosecutor of İzmir had dropped the charges against the applicant. He also obtained information about the applicant's personal, financial and social status. The judge found that the evidence obtained was sufficient to enable him to draft his report and decided in the exercise of his discretion under section 3 of Law No. 466 that it was unnecessary to hear the applicant. The public prosecutor was asked for his written observations on the applicant's claim. On 7 December 1995 the public prosecutor, as required by Law no. 466, submitted his opinion to the Karşıyaka Assize Court. The public prosecutor noted that the applicant was taken into custody on 25 July 1995, and not on 24 July 1995 as claimed, and was released on 27 July 1995. The public prosecutor recommended that the applicant be given compensation for non-pecuniary damage in an amount to be assessed by the court. This opinion was not served on the applicant.

20. The judge stated in his report of 7 December 1995 to the Karşıyaka Assize Court, *inter alia*, that the applicant had been detained for two days from 25 July to 27 July 1995 and upon his release had obtained a medical report which indicated that he had been assaulted ("*darp edildiği*"). The judge recommended that the applicant be awarded compensation for non-pecuniary damage in respect of his detention, calculated on the basis of his personal, financial and social status.

21. On 7 December 1995 the Karşıyaka Assize Court found that the applicant was detained for two days and qualified for compensation. In its judgment, the court noted all the complaints in the petition submitted by the applicant's lawyer. With reference to the applicant's personal, financial and social status, the court awarded the applicant TRL 10,000,000 by way of compensation and TRL 1,500,000 in respect of legal fees.

22. The applicant's lawyer and the Treasury both appealed against the award. The applicant's lawyer contended on appeal that the amount of compensation was insufficient reparation for his wrongful arrest and detention. He did not challenge the dates of detention as determined by the court. On 17 October 1996 the Principal Public Prosecutor at the Court of Cassation submitted his opinion on the merits of both parties' appeals. In his written submissions to the Court of Cassation the Principal Public Prosecutor stated that neither of the parties had grounds for appeal and advised that both their appeals be rejected. This opinion (*tebliğname*) was not submitted to the applicant.

23. On 7 November 1996 the 6th Chamber of the Court of Cassation for Criminal Law Matters (*Yargıtay*) upheld the judgment of 7 December 1995.

24. According to information submitted by the Government, the applicant never applied to obtain the compensation awarded to him by the Karşıyaka Assize Court.

II. RELEVANT DOMESTIC LAW

25. Article 19 of the Constitution provides:

> "Everyone has the right to liberty and security of person.
>
> No one shall be deprived of his liberty save in the following cases and in accordance with the formalities and conditions prescribed by law:
>
> ...
>
> The arrested or detained person must be brought before a judge within forty-eight hours at the latest or, in the case of offences committed by more than one person, within fifteen days...These time-limits may be extended during a state of emergency...
>
> ...
>
> A person deprived of his liberty, for whatever reason, shall have the right to take proceedings before a judicial authority which shall give a speedy ruling on his case and order his immediate release if it finds that the deprivation of liberty was unlawful.
>
> Compensation must be paid by the State, as the law shall provide, for damage sustained by persons who have been victims of treatment contrary to the above provisions."

26. Under section 128 of the Code of Criminal Procedure, an arrested person must be brought before a judge within twenty four hours or, where the offence has been committed by more than one person, within four days.

27. Section 1 of Law No. 466 on the payment of compensation to persons arrested or detained provides:

"Compensation shall be paid by the State in respect of all damage sustained by persons:

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute law;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time-limit laid down by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time-limit for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being released or detained in accordance with the law, are not subsequently committed for trial..., or are acquitted or discharged after standing trial;

or

(7) who have been sentenced to a period of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only."

28. According to section 2 of Law no. 466, a claimant must apply for compensation to the local assize court within three months, setting out the facts complained of and indicating the amount claimed.

According to section 3 of the same Law, the competent court appoints one of its members to examine the application. The judge appointed hears the claimant if necessary, studies the file and requests the public prosecutor to submit his written observations on the claim. The judge then reports back to the court, which decides on the application on the basis of the judge's assessment and the written observations of the public prosecutor. It does not hold a hearing. The claimant has one week in which to lodge an appeal against the decision reached by the assize court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that the observations of the Principal Public Prosecutor on his appeal were not notified to him and that he was deprived of his right to an oral hearing on his compensation claim. The applicant contended that these shortcomings gave rise to a breach of Article 6 § 1 of the Convention which provides as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

30. It has not been disputed that the case concerns "a civil right" within the meaning of that provision. The Court sees no reason to take a different view (see the Georgiadis v. Greece judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 959, § 35; and the Szücs v. Austria judgment of 24 November 1997, *Reports* 1997-VII, p. 2480, § 37).

31. The applicant asserted that the Court of Cassation admitted to the file the observations of the Principal Public Prosecutor on the merits of his and the Treasury's grounds of appeal. However, he never received a copy of those observations and was thus denied the right to respond to the observations. The applicant further maintained that the domestic court assessed his claim for compensation solely on the basis of the written observations of the public prosecutor in application of section 3(2) of Law no. 466. In the applicant's submission, he had no right under domestic law to request an oral hearing either under Law no. 466 or under the general provisions of the Code of Civil Procedure or the Code of Administrative Procedure. In any event, recourse to the provisions of the latter Codes would not have assisted him given that the provisions of Law no. 466 would have been held to be *lex specialis*.

32. The Government did not make any submissions on the applicant's complaint concerning the non-communication of the Principal Public Prosecutor's observations on his appeal. As to the lack of an oral hearing, the Government submitted that it would have been open to the applicant to request an oral hearing before the Court of Cassation in application of Article 438 of the Code of Civil Procedure given that his claim was above the threshold stipulated in Article 438 as a pre-condition of the holding an oral hearing. However the applicant never requested an oral hearing. The Government added that Law no. 466 was intended to provide for a special procedure for compensating individuals who have been unlawfully apprehended or detained. The aim of the law was to allow compensation claims to be examined on the basis of the case file and to avoid the delay

and expense of an oral hearing. The applicant's claim was well-documented and there were no public interest considerations at stake which would have required the courts to hear oral evidence. Significantly, the applicant's claim was determined in four and a half months.

33. The Court observes that the role of the Principal Public Prosecutor before the Court of Cassation was to advise on the merits of the appeals brought by the applicant and the Treasury. The Principal Public Prosecutor submitted in writing his view that the award of damages made by the first instance court should be upheld. His opinion was accordingly intended to influence the outcome of the Court of Cassation's decision.

34. In the Court's opinion, having regard to the nature of the Principal Public Prosecutor's submissions and to the fact that the applicant was not given an opportunity to make written observations in reply there has been an infringement of the applicant's right to adversarial proceedings. That right means in principle the opportunity for the parties to a civil or criminal trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, such as the Principal Public Prosecutor in the instant case, with a view to influencing the court's decision (see, among many authorities, the J.J. v. Belgium judgment of 27 March 1998, *Reports* 1998-II, p. 613, § 43).

35. It is true that the Principal Public Prosecutor also advised in favour of the rejection of the Treasury's appeal. However, while this neutral approach may have ensured equality of arms between the parties at the appeal stage it still remained the case that the applicant disputed the amount of damages awarded by the lower court. He was therefore entitled to have full knowledge of any submissions which undermined his prospects of success before the Court of Cassation.

Indeed, as a matter of fairness, the communication of such submissions was even more compelling in view of the fact that the applicant was not entitled to an oral hearing before the domestic courts.

36. There has accordingly been a violation of Article 6 § 1 as regards the non-communication to the applicant of the Principal Public Prosecutor's observations to the Court of Cassation.

37. Having regard to its conclusion that there was an infringement of the applicant's right to a fair hearing for the reason stated, the Court does not consider it necessary to examine separately the applicant's complaint that the fairness of the proceedings was also breached on account of the absence of an oral hearing.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed the sum of FRF 50,000 by way of compensation for non-pecuniary damage. He did not submit a claim in respect of pecuniary damage.

40. The Government did not comment on the applicant's claim.

41. The Court considers that its finding of a violation of Article 6 § 1 of Convention as regards the infringement of the applicant's right to an adversarial procedure constitutes in itself sufficient just satisfaction for the alleged non-pecuniary damage.

B. Costs and expenses

42. The applicant claimed the sum of FRF 13,500 under this head. He submitted that FRF 10,000 of this amount was made up of lawyers' fees incurred in the course of the domestic and Convention proceedings, the remainder representing costs and expenses.

43. The Government did not comment on this claim either.

44. Deciding on an equitable basis, the Court awards the applicant the sum of FRF 10,000 minus the sum of FRF 4,100 he received by way of legal aid from the Council of Europe.

C. Default interest

45. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 2.74% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the lack of opportunity to respond to the submissions of the Principal Public Prosecutor to the Court of Cassation;

2. *Holds* that is not necessary to examine separately the applicant's complaint concerning the absence of an oral hearing in the domestic proceedings;

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

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months, from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amount: 10,000 (ten thousand) French francs, in respect of costs and expenses, together with any value-added tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement, less 4,100 (four thousand one hundred) French francs received by way of legal aid to be converted into Turkish liras at the rate applicable at the date of delivery of judgment;
(b) that simple interest at an annual rate of 2.74% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 9 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER	Georg RESS
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion of Mr Makarczyk and Mr Türmen is annexed to this judgment.

G.R.
V.B.

JOINT CONCURRING OPINION OF JUDGES MAKARCZYK AND TÜRMEN

We share the Court's conclusion that there has been a violation of Article 6 § 1 of the Convention due to the non-communication to the applicant of the Principal Public Prosecutor's observations to the Court of Cassation.

As far as the applicant's complaint that he was deprived of his right to an oral hearing on his compensation claim is concerned, we would have preferred the Court to examine this complaint with a view to reaching the conclusion that in the circumstances there has been no violation of Article 6 § 1 for the following reasons.

It is true that in line with the case-law of the Court, in proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see the Allan Jacobsson v. Sweden (no. 2) judgment of 19 February 1998, *Reports* 1998-I, p. 168, § 46).

We note that in the instant case the only point which required a determination was the quantum of damages to which the applicant was entitled in respect of the period spent in detention. The applicant did not dispute either the length of his detention or the basis used for the calculation of damages. Furthermore, the applicant has not adduced any exceptional circumstances to the effect that the domestic courts should have held an oral hearing on the merits of the applicant's claim. Given the limited nature of the issues to be determined, the applicant's case could properly be dealt with on the basis of a written procedure.

In fact, in the above-mentioned Allan Jacobsson case, the Court stated in paragraph 49 of its judgment that "(...) the Court does not find on the evidence before it that the applicant's submissions to the Supreme Administrative Court were capable of raising any issues of fact or of law pertaining to his building rights which were of such a nature as to require an oral hearing for their disposition. On the contrary, given the limited nature of the issues to be determined by it, the Supreme Administrative Court, although it acted as the first and only judicial instance in the case, was dispensed from its normal obligation under Article 6 § 1 to hold an oral hearing. Accordingly, there has been no violation of this provision."

We must also take into account the functioning of the compensation scheme contained in Law no. 466. The scheme was intended to provide for a speedy and effective determination of compensation claims on the basis of the case file and an initial judicial assessment of the merits of a claim. It has not been disputed that an oral hearing could have been held if there existed obvious public interest considerations which warranted one. However, where only private interest considerations exist, it is understandable that the national authorities should have regard to the demands of efficiency and

economy. Systematically holding hearings could be an obstacle to the speedy determination of the statutory compensation scheme such as the one at issue and could ultimately prevent compliance with the "reasonable time" requirement of Article 6 § 1 (see the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58).

For these reasons, we conclude that in the circumstances at issue there has been no violation of Article 6 § 1 by reason of the failure to hold an oral hearing in the applicant's case.