FIFTH SECTION

**CASE OF CANER v. AUSTRIA**

*(Application no. 35841/16*)

JUDGMENT

STRASBOURG

20 September 2018

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

In the case of Caner v. Austria,

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

 Yonko Grozev, *President,* Gabriele Kucsko-Stadlmayer, Lәtif Hüseynov, *judges,*
and Liv Tigerstedt *Acting Deputy Section Registrar,*

Having deliberated in private on 30 August 2018,

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

PROCEDURE

1.  The case originated in an application against Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the date indicated in the appended table.

2.  The application was communicated to the Austrian Government (“the Government”).

THE FACTS

3.  The name of the applicant and the relevant details of the application are set out in the appended table.

4.  The applicant complained of the excessive length of criminal proceedings and the lack of an effective remedy in that respect.

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

5.  The applicant complained principally that the length of the criminal proceedings in question had been incompatible with the “reasonable time” requirement. He relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by a ... tribunal...”

6.  The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier  and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999‑II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000‑VII).

7.  In the leading cases of *Vitzthum v. Austria,* no. 8140/04, §§ 21-23, 26 July 2007, and *Donner v. Austria,* no. 32407/04, §§ 34-38, 22 February 2007, the Court already found a violation in respect of issues similar to those in the present case.

8.  Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion as to the admissibility and merits of this complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

9.  This complaint is therefore admissible and discloses a breach of Article 6 § 1 of the Convention.

II.  OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

10.  The applicant submitted another complaint which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Accordingly, it must be declared admissible. Having examined all the material before it, the Court concludes that it also discloses a violation of the Convention in the light of its findings in *Donner,* §§ 45-46, cited above.

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

11.  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.”

12.  Regard being had to the documents in its possession and to its case‑law (see, in particular, *Kücher v. Austria,* no. 2834/09, §§ 16 and 43, 5 February 2015), the Court finds it reasonable to award the sums indicated in the appended table.

13.  The Court considers it appropriate that the default interest rate 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 the application discloses a breach of Article 6 § 1 of the Convention concerning the excessive length of criminal proceedings;

3.  *Holds* that there has been a violation of the Convention as regards the other complaint raised under well-established case-law of the Court (see appended table);

4.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table and

(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.

Done in English, and notified in writing on 20 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Liv Tigerstedt Yonko Grozev
 Acting Deputy Registrar President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention
(excessive length of criminal proceedings)

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| No. | Application no.Date of introduction | Applicant nameDate of birth | Representative name and location | Start of proceedings | End of proceedings | Total lengthLevels of jurisdiction | Other complaints under well-established case-law | Amount awarded for pecuniary and non-pecuniary damage per applicant(in euros)[[1]](#footnote-1) | Amount awarded for costs and expenses per application(in euros)[[2]](#footnote-2) |
|  | 35841/1614/06/2016 | **Cevdet Caner**29/07/1973 | Muck Jorg Köln | 17/03/2011 | pending | More than 7 years and 3 months1 level of jurisdiction | Art. 13 - lack of an effective remedy in domestic law - There is no legal remedy available under Austrian law to accelerate criminal proceedings while they are still pending at the investigative stage. | 8,000 | 2,000 |

1. .  Plus any tax that may be chargeable to the applicant. [↑](#footnote-ref-1)
2. .  Plus any tax that may be chargeable to the applicant. [↑](#footnote-ref-2)